



भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित
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सं. 8] नई दिल्ली, फरवरी 25—मार्च 2, 2024, शनिवार/ फाल्गुन 6—फाल्गुन 12, 1945
No. 8] NEW DELHI, FEBRUARY 25—MARCH 2, 2024, SATURDAY/ PHALGUNA 6—PHALGUNA 12, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(आर्थिक कार्य विभाग)

नई दिल्ली, 27 फरवरी, 2024

का.आ. 381.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम(4) के अनुसरण में, वित्त मंत्रालय, आर्थिक कार्य विभाग के प्रशासनिक नियंत्रणाधीन भारतीय प्रतिभूति और विनिमय बोर्ड, पूर्वी प्रादेशिक कार्यालय, एल एंड टी चैम्बर्स, तीसरी मंजिल, 16 कैमक स्ट्रीट, कोलकाता-700017, पश्चिम बंगाल जिसके 80 प्रतिशत से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है:

भारतीय प्रतिभूति और विनिमय बोर्ड,
पूर्वी प्रादेशिक कार्यालय, एल एंड टी चैम्बर्स,
तीसरी मंजिल, 16 कैमक स्ट्रीट,
कोलकाता-700017, पश्चिम बंगाल

[फा.सं. 11013/06/2020-हिंदी]

अपर्णा भाटिया, सलाहकार (प्रशा.)

MINISTRY OF FINANCE**(Department of Economic Affairs)**

New Delhi, the 27th February, 2024

S.O. 381.—In pursuance of Sub-rule(4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government, hereby, notifies the Securities and Exchange Board of India, Eastern Regional Office, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata-700017, West Bengal under the administrative control of Ministry of Finance, Department of Economic Affairs, whereof more than 80% of the staff have acquired working knowledge of Hindi:

Securities and Exchange Board of India,
Eastern Regional Office, L&T Chambers,
3rd Floor, 16 Camac Street,
Kolkata-700017, West Bengal

[F. No. 11013/06/2020-Hindi]

APARNA BHATIA, Advisor (Admn.)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 19 फरवरी, 2024

का.आ. 382.—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मिज़ोरम राज्य सरकार, सतर्कता विभाग, मिज़ोरम सचिवालय भवन, खाल्ला:आइज़ोल की अधिसूचना सं. सी 31016/1/2020/सतर्कता, दिनांक 28.12.2023, के माध्यम से जारी सम्मति से, मिज़ोरम राज्य में अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मिज़ोरम राज्य में करती है।

[फा. सं. 228/03/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 19th February, 2024

S.O. 382.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (No.25 of 1946), the Central Government with the consent of the State Government of Mizoram, Vigilance Department, Mizoram Secretariat Building, Khatla:Aizawl accorded vide Notification No.-C.31016/1/2020/VIG, dated 28.12.2023, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment for investigation of offences in the state of Mizoram.

[F. No. 228/03/2024-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 19 फरवरी, 2024

का.आ. 383.—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार की अधिसूचना सं. एफ.2/8(110)गृह-5/81, दिनांक 04.01.2024, गृह (गृ.-v) विभाग, जयपुर के माध्यम से जारी सम्मति से, अधिसूचना सं. एफ.25(4)गृह-5/88, दिनांक 06.01.1989 की अधिसूचना के माध्यम से अनुदत्त भ्रष्टाचार निवारण अधिनियम, 1988 (1989 का केन्द्रीय अधिनियम सं. 49) के तहत किए गये अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त राजस्थान राज्य में करती है। राज्य सरकार द्वारा किन्हीं अन्य अपराधों के लिए समस्त पूर्व सम्मतियाँ और किसी भी अन्य अपराध के लिए मामला दर मामला अनुदत्त सम्मति भी यथावत लागू रहेंगी।

[फा. सं. 228/04/2024-एवीडी-II]

कुंदन नाथ, अवर सचिव

New Delhi, the 19th February, 2024

S.O. 383.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act No.25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Group-V) Department, Jaipur accorded vide Notification No.-F.2/8(110)Home-5/81, dated 04.01.2024, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole state of Rajasthan for investigation of offence under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1989) accorded vide Notification No. F.25(4)Home-5/88 dated 06.01.1989. All previous general consents for any other offences and consent accorded case to case basis for any other offence by the State Government shall also remain in force.

[F.No. 228/04/2024-AVD-II]

KUNDAN NATH, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 23 फरवरी, 2024

का.आ. 384.—केंद्र सरकार तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3) (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए सुश्री निवेदिता शुक्ला वर्मा, सचिव, रसायन और पेट्रोरसायन विभाग और सुश्री वर्तिका शुक्ला, अध्यक्ष एवं प्रबंध निदेशक, इंजीनियर्स इंडिया लिमिटेड (ईआईएल) को दिनांक 22.02.2024 से 21.02.2026 तक या अगले आदेशों तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में एतद्वारा नियुक्त करती है।

[फा. सं. जी-38011/41/2016-वित्त. I/ओएनजी-I]

अमित बंसल, उप सचिव

MINISTRY OF PETROLEUM & NATURAL GAS

New Delhi, the 23rd February, 2024

S.O. 384.—In exercise of the Powers conferred by Sub-Section (3)(b) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Ms. Nivedita Shukla Verma, Secretary, Department of Chemicals and Petrochemicals and Ms. Vartika Shukla, Chairman & Managing Director, Engineers India Limited (EIL) as a Member of the Oil Industry Development Board w.e.f. 22.02.2024 to 21.02.2026 or until further orders, whichever is earlier.

[F. No. G-38011/41/2016-F.I/ONG-I]

AMIT BANSAL, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 फरवरी, 2024

का.आ. 385.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कमकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़-I के पंचाट (35/2015) प्रकाशित करती है।

[सं. एल - 12012/78/2015- आई आर (बी-II)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st February/2024

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.35/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/78/2015- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.35/2015

Registered On: 10.03.2016

Sh. Faquir Chand Urf Pardeep Kumar R/o Ahata No.10, Charmrane Mandi, Ferozepur Cantt. (Pb) .

.....Workman

Versus

1. The Managing Director Cum CEO, Punjab National Bank, Head Office Bhika Ji Cama Palace, New Delhi.
2. The Senior Manager, Punjab National Bank, Basti Tankanwali, Ferozepur.
3. The Circle Head, Punjab National Bank, Circle Office, Bathinda.

.....Managements

AWARD

Passed On: 11.01.2024

Central Government vide Notification No. L-12012/78/2015-IR(B-II) dated 26.02.2016, under clause (d) of Sub-Section (1) sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Punjab National Bank in terminating the services of workman Shri Faquir Chand urf Pardeep Kumar w.e.f. 01.05.2009 is legal and justified? If not, what relief the workman is entitled to and from which date?”

1. During the pendency of the proceedings before this Tribunal the case was fixed for evidence of workman but none is responding on behalf of workman. It is submitted by the Ld. Counsel for the management that workman is not turning up since long and prayed for dismissal of the present claim petition.
2. Perused the file and it is found that the submissions made by the Ld. Counsel for management is true. Several opportunities have already been given to the workman for evidence. Which denotes that the workman is not interested in adjudication of the matter on merits as such, this Tribunal is left with no choice except to pass a ‘No Claim Award’. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.
3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 21 फरवरी, 2024

का.आ. 386.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़-I** के पंचाट (197/2016) प्रकाशित करती है।

[सं. एल - 41011/29/2016- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 21st February, 2024

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.197/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-41011/29/2016- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.197/2016

Registered On: 22.03.2017

Sh. Latesh Chander S/o Sh. Ram Kishan, Village Johar Majra, Tehsil Indri District Karnal.

.....Workman

Versus

1. The Deputy General Manager, State Bank of India, Administrative Office, Sector 5, Panchkula (Haryana)-134102.
2. The Regional Manager, State Bank of India, RBO, Panipat (Haryana)-132103.
3. The General Secretary, State Bank of India Sh. SC Gupta AR/ Sh. Sanjay Tangri. Empl. Welfare Association, H.No.3086/2, Sector 44-D, Chandigarh-160047.

.....Managements

AWARD

Passed On: 08.01.2024

Central Government vide Notification No. L-41011/29/2016-IR(B-I) dated 09.03.2017, under clause (d) of Sub-Section (1) sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether action of the State Bank of India in discharging Sri Latesh Chander from service is just, fair and legal? If not to what relief is the workman entitled?”

1. During the pendency of the proceedings before this Tribunal the case was fixed for evidence of workman but none is responding on behalf of workman. It is submitted by the Ld. Counsel for the management that workman is not turning up since long and prayed for dismissal of the present claim petition.
2. Perused the file and it is found that the submissions made by the Ld. Counsel for management is true. Several opportunities have already been given to the workman for filing evidence. Which denotes that the workman is not interested in adjudication of the matter on merits as such, this Tribunal is left with no choice except to pass a ‘No Claim Award’. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.
3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 21 फरवरी, 2024

का.आ. 387.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़-I** के पंचाट (03/2020) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-108]

सलोनी, उप निदेशक

New Delhi, the 21st February, 2024

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.03/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024- IR(B-I)-108]

SALONI, Dy. Director

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.****Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.**

ID No.03/2020

Registered On:-27.07.2020

Santosh Devi W/o Sh. Satish Kumar, R/o H.No.725/4, Babu Dham Colony, Chandigarh

.....Workman

Versus

1. State Bank of India-Branch Manager/ Chief Manager, Address: SCO No.27-28, Madhya Marg, Sector 7-C, Chandigarh-160017.
2. State Bank of India-Regional General Manager, Address: Region-I, Regional Business Office-I, SCO 101-108, Sector 17-B, Chandigarh 160017.
3. M/s G.S. Enterprises, 2923/1, Pipliwala Town, Manimajra, Chandigarh.

.....Respondents/Managements

AWARD**Passed On:-15.11.2023**

1. The workman has directly filed statement of claim under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called the Act), with a prayer to reinstate the workman with back wages.
2. The brief facts relevant for deciding this claim petition is that the workman was appointed as "peon" on Oct 2013 at respondent No.1 by respondent No.3. The date of joining wrongly mentioned as Oct 2008 in the demand notice before the Assistant Labour Commissioner(C) -cum - conciliation officer. The applicant/workman is a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. The daily timing of the applicant/workman was from 08.00 AM to 04.00 PM with weekly off. The work of the workman was controlled, supervised and assessed by respondent no. 3's supervisor . The personal file, record of leaves etc. of the applicant/workman was maintained by respondent no 1 and 3. The applicant/workman was being paid Rs. 5,500/- as gross salary in cash and ESI, EPF and other labour welfare schemes had not have been provided by respondents to the applicant/workman. The applicant/workman had not been given his last salary and the applicant/workman had not been given his bonus of the financial year 2016-17, 2018-2019 and also the workman had not been paid his National holiday, leave encashment etc. The work and conduct of the applicant/workman while in service was unblemished and satisfactory. Neither any charge sheet was served to the workman nor any enquiry was conducted against the workman for any misconduct during whole tenure of his work while he was in service. On 18 September 2019 the applicant/workman told by the management (Supervisor) of respondent no 3 not to come for duty from the next day and also to resign from the service otherwise we will terminate you. The work on which the workman was deputed is still going on as the work is a regular work of the industry/establishment of Respondent No. 1 or 2 and respondent no 3. The applicant/workman has completed 240 days in the 12 calendar months preceding his termination. In view of the above made submissions, it is therefore prayed that respondents may be directed to reinstate the service of the applicant/workman with continuity of service along with all the benefits including the full back wages in the interest of justice.
3. Respondent No.1 & 2 has filed written statement alleging therein that the workman is not an employee of the answering respondents as averred on the alleged statement of claim. Since there has been no relationship of employer-employee and/or master-servant between the answering respondents and Santosh Devi, therefore the alleged statement of claim is not maintainable against the answering respondents. Workman never used to mark his attendance in the attendance register pertaining to the employees of the answering Respondents. Workman has never been paid any wages by the answering respondents; hence the question of termination of service of Workman by the answering Respondents as alleged in the alleged statement of claim by Workman does not arise at all. The alleged statement of claim submitted by Workman is against State Bank of India, Branch, sector 7/C, Chandigarh and also impleaded Regional Manager of store Bank of India, Regional business Office-1, Sector 17, Chandigarh as well as M/s GS Enterprises, 2923/1, Pipliwala Town, Manimajra, Chandigarh. The workman is not a 'Workman' of the answering respondents as defined under Section 2(s) of the Industrial Disputes Act, 1947. The answering respondents engages contractors for petty jobs related to up keep and maintenance of the said building for providing services of sweeping, mopping, dusting, cleaning and other maintenance service. M/s GS Enterprises, 2923/1, Pipliwala Town, Manimajra, Chandigarh is one of the Contractors engaged through Regional Business Office, Chandigarh of the answering respondents. Since workman has never been an employee of the answering respondent and no master-servant and/or employer- employee relationship ever existed and/or subsisted between the answering respondents and with Workman the answering respondents are not aware of the facts in the matter.

4. Respondent No.3 has not filed any written statement.
5. During the pendency of the proceedings before this Tribunal the case was fixed for filing replication by the workman but none is responding on its behalf. Several opportunities have already been given to the workman for filing replication but of no use, which denotes that the workman is not interested in adjudication of the matter on merits.
6. Since the workman has neither put his appearance since long nor he has filed any replication to prove his cause against the management, as such, this Tribunal is left with no choice except to pass a no claim award. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.
7. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 21 फरवरी, 2024

का.आ. 388.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 8) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़-I के पंचाट (64/2018) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-107]

सलोनी, उप निदेशक

New Delhi, the 21st February, 2024

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.64/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of ICICI Bank and their workmen.

[No. L-12025/01/2024- IR(B-I)-107]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.64/2018

Registered On:-23.07.2018

Aaroon Khan S/o Sh. Rashid Mohamad R/o H.No.173, Railway Colony, Ward No.30, Jalandhar.

.....Workman

Versus

1. ICICI Bank, Currency Chest, PUDA Complex, Jalandhar through its Manager.
2. Checkmate Services Pvt. Ltd. through its Manager, 183, Ranjiv Enclave, Old Phawara Road, Deep Nagar, Jalandhar Cantt.
3. Checkmate Services Pvt. Ltd. through its Managing Director, Aman Tower G.F. 5,7,8,9 Suray Colony, Fatehganj, Main Road, Vadodera, Gujrat-390002.

.....Respondents

AWARD

Passed On:-19.01.2024

1. The workman Sh. Aaroon Khan has directly filed statement of claim under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called the Act), with a prayer to reinstate the workman with back wages.

2. During the pendency of the proceedings before this Tribunal the case was fixed for filing replication by Workman but none is responding on its behalf. Several opportunities have already been given to the workman for filing replication by Workman but of no use which denotes that the workman is not interested in adjudication of the matter on merits.

3. Since the workman has neither put his appearance since long nor he has led any evidence to prove his cause against the management as such, this Tribunal is left with no choice except to pass a 'No Claim Award'. Accordingly, no claim award is passed in the present case for non-prosecution of workman. File after completion be consigned in the record room.

4. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 21 फरवरी, 2024

का.आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चंडीगढ़-I के पंचाट (15/2017) प्रकाशित करती है।

[सं. एल - 12012/37/2016- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 21st February, 2024

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of Sarva Haryana Gramin Bank and their workmen.

[No. L-12012/37/2016- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Kamal Kant, Presiding Officer-cum-Link Officer, Chandigarh.

ID No.15/2017

Registered On: 17.07.2017

Nepal Singh, S/o Harpal Singh, Vill-Sherpur, Tehsil-Pataudi, Distt: Gurgaon (Haryana).

.....Workman

Versus

1. The Sr. Manager/ concerned Manager Sarva Haryana Gramin Bank, Formerly known as Gurgaon Gramin Bank, Branch Pataudi, Gurgaon (Haryana).
2. The Chairman, Sarva Haryana Gramin Bank, Formerly known as Gurgaon Gramin Bank, Head Office, Near Bajrang Bhawan, Delhi Road, Rohtak-124001.
3. Nodal/ Regional Officer, Sarva Haryana Gramin Bank, Formerly known as, Gurgaon Gramin Bank Pragati Bhawan Plot No. 36(P), Sector 44, Institutional Area, Gurgaon (Haryana)-122002.

.....Managements

AWARD

Passed On: 05.01.2024

Central Government vide Notification No. L-12012/37/2016-IR(B-I) dated 07.07.2017, under clause (d) of Sub-Section (1) sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Sarva Haryana Gramin Bank, in terminating the workman Sh. Nepal Singh S/o Harpal Singh, attendant w.e.f. 17.12.2011 is legal and justified? If not, what relief the workman is entitled to and from which date?”

1. During the pendency of the proceedings before this Tribunal the case was fixed for filing claim statement by workman but none is responding on behalf of workman. It is submitted by the Ld. Counsel for the management that workman is not turning up since long and prayed for dismissal of the present claim petition.
2. Perused the file and it is found that the submissions made by the Ld. Counsel for management is true. Several opportunities have already been given to the workman to file the claim statement but of no use. Which denotes that the workman is not interested in adjudication of the matter on merits as such, this Tribunal is left with no choice except to pass a ‘No Claim Award’. Accordingly, no claim award is passed in the present case for the non-prosecution of workman. File after completion be consigned in the record room.
3. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, PO-cum-Link Officer

नई दिल्ली, 22 फरवरी, 2024

का.आ. 390.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (80/2019) प्रकाशित करती है।

[सं. एल - 12011/40/2019- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 22nd February, 2024

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.80/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-12011/40/2019- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 80/2019

Ref. No. L-12011/40/2019-IR(B-II) dated: 18.10.2019

BETWEEN

The General Secretary, Union Bank Employees Union, UP, 628/M-33, Murari Nagar, Faizabad Road, Lucknow - 226017

AND

1. The Managing Director & CEO, Union Bank of India, Central Office, Union Bank Bhawan, 239, Vidhan Sabha Marg, Nariman Point, MUMBAI – 400021
2. The Regional Manager, Union Bank of India, Ist Floor, Regional Office, Vibhuti Khand, Lucknow

AWARD

By order No. L-12011/40/2019-IR(B-II) dated: 18.10.2019 the present industrial dispute has been referred for adjudication to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

“Whether the action of the management of Union Bank of India in denying the request of compassionate appointment to Shri Vikas Kumar Sonker dependent of the deceased employee late R.S. Sonker, Head Cashier, Gonda Branch, Lucknow Region on the ground of major and minor penalty imposed on the deceased employee is just and legal If not, what relief Shri Vikas Kumar Sonker is entitled to and to what extent?”

In response to reference on 02.01.2019, statement of claim has been filed, thereafter, written statement alongwith preliminary objection was filed on behalf of respondent, to which rejoinder statement has been filed.

On 02.01.2024, an application has been moved on behalf of applicant by General Secretary, Union Bank Employees Union U.P. Lucknow, the same is quoted hereunder:

“In the above pending dispute The Union has decided not to pursue the matter further due to some technical reason and therefore is submitting this prayer before your Hon'able Court to please allow to close the case at this stage.”

Authorized representative of the workman on the basis of said application submits that he does not want to press the present industrial dispute and the same may be dismissed as not pressed.

Counsel for respondent has no objection.

Accordingly, in view of the above said facts, the claim of workman is dismissed as not pressed; and workmen are not entitled for any relief.

The reference under adjudication is answered accordingly.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 फरवरी, 2024

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आंध्रा बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (3/2010) प्रकाशित करती है।

[सं. एल - 12012/97/2009- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 22nd February, 2024

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 3/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen.

[No. L-12012/97/2009- IR(B-II)]

SALONI, Dy. Director

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of January, 2024

INDUSTRIAL DISPUTE No. 3/2010

Between:

Sri Danala Surendra Kumar

Ogeshipeta, Krishna Dist.,

Machilipatnam (A.P.).

..... Petitioner

AND

1. Assistant General Manager,

Andhra Bank, Zonal Office,

Vijayawada (A.P.).

2. The Sr. Manager,

Andhra Bank, LIC of India Office Branch,

Machilipatnam (A.P.).

.... Respondents

Appearances:

For the Petitioner : Sri A.P. Venu Gopal , Advocate

For the Respondent: M/s. S. Mujib Kumar, S. Vikramaditya Babu & M. Radhamani,
 Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/97/2009-IR(B-II) dated 15.2.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Bank and their workman. The reference is,

SCHEDULE

“Whether the action of the management of Andhra Bank, LIC of India Office Branch, Machilipatnam in terminating the services of Shri D.Surendra Kumar, Ex. Attendar with effect from 7.1.2008 is justified? To what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 3/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows:**

It is submitted that the Petitioner has raised a dispute regarding illegal termination of his services as office subordinate in the respondent Nationalized Bank. The respondent has denied the said claim of the workman of the Petitioner. Therefore the dispute raised before the Conciliation Officer, Vijayawada. Ultimately the matter was referred to the Hon'ble Industrial Tribunal (Central) for adjudication. The Petitioner submits that the respondent management used to engage the workmen by direct recruitment to respective Branch Managers to meet the workload of sub-ordinate nature works like, sweeping, scavenging, attending to office Staff and Generator Operating etc., of all related Bank labour servicing Works as usual in which exiting all other banks also from 10.00 AM to 5.00 PM even continued upto the closing of the Bank i.e., in late hours upto 7.00 PM, 8.00 PM range. It is further submitted that the Petitioner has rendered his sub-staff duties including Sweeping, Scavenging in the eve of absent of the Sweeper and Scavenging and Generator Operating from his appointment date to till his termination date. It is further submitted that Sri B. Appa Rao, General Secretary, All India Safai Mazdoor Congress (A.P. Unit) was given authorization by the Petitioner and accordingly, B. Appa Rao attended before the ALC (C), Vijayawada in the conciliation proceedings. It is further submitted that the Petitioner has worked under the Branch Managers 1. Shri K. Pratap Reddy, 2. Shri Jaganandham, 3. Shri Y.V. Raghavulu and 4. Shri G. Hara Gopal respectively and Shri G. Hara Gopal have terminated orally and ordered accordingly to all the Bank Staff Members as not to allow him in to Bank to engage any kind of service without giving any prior information/notice and opportunity explained himself and one Shri J. Yesu Babu was taken in my place and after some months he was also terminated. It is further submitted that the Union representative also stated that as per Government of India, Ministry of Finance, New Delhi, dated 19.5.2006 "It was suggested that instructions may be issued to the banks that the services of part-time sweepers/employees may be

regularized as full time sweepers/employees and that appointments may be made only on regular basis in the future. The representatives of Confederation/Federation were informed that the above suggestion would be forwarded to the banks for consideration and appropriate action". The Petitioner was paid Rs.100/- per day from the joining date of duty upto the termination date, contrary to the minimum rate of wages and not paid overtime wages for his late working hours, beyond the 8 hours duty for all his working days. It is further submitted that the Petitioner has made all the efforts to settle the dispute and failed. The Petitioner reserves the right to raise additional grounds at the time of hearing. For the reasons stated above, it is prayed to hold and declare that Danala Surendra Kumar i.e., entitled for post of sub-staff full scale with retrospective effect and to grant all consequential benefits from the date of acting as sub-staff.

3. Respondent filed counter denying the averments of the Petitioner as under:

The averments that the petitioner was engaged by the managers of the LIC Office branch of the bank in Machilipatnam to meet the workload in Subordinate-staff cadre, that he rendered service as Sweeper, Scavenger and also a Generator Operator in addition to the duties attached to the post of Sub-staff, that his services were terminated by one Mr.G.Haragopal, who worked as manager of LIC of India Office branch, Machilipatnam, that one Mr.J.Yesu Babu was taken into service in his place, that the services of the said Yesu Babu were also terminated after some time and that he was paid Rs.100/- per day are all false and are denied by the respondents. It is submitted that as per records the services of the petitioner were never utilized by the LIC Office branch of the bank in Machilipatnam in any capacity as claimed by the petitioner. When his services were never utilized by the bank, the question of termination of his services would not arise at all. It is submitted that it is true that the petitioner had raised an industrial dispute alleging that his services were illegally terminated by the then manager of LIC Office branch, Machilipatnam with effect from 07.01.2008. It was the specific case of the bank that the services of the petitioner were never utilized by the bank in any capacity at any point of time. The petitioner inspite of such stand taken by the bank did not put forth any evidence to prove his claim that his services were utilized by the bank. The Conciliation Officer has simply recorded failure of the conciliation proceedings. The Government of India has also without examining the matter has mechanically referred the dispute to this Hon'ble Tribunal for its adjudication. Thus the reference made to this Hon'ble Tribunal is bad in law for the reason of non application of mind. It is submitted that in the respondent bank there are broadly 4 categories of employees namely, Officers, Clerks, Subordinate staff (Attendants) and Part Time Sweepers. Earlier the bank used to recruit persons in officer and clerical cadres through the Banking Service Recruitment Boards. For recruitment of persons in subordinate staff and part time sweeper categories bank used to place indents with the District Employment Exchanges for sponsoring the candidates registered with them. The bank used to select and appoint only the candidates sponsored by the Employment Exchanges, subject to the eligibility norms as prescribed under the Recruitment Policy laid down by the Board of the bank. Over a period it was noticed that the branches used to engage persons in leave vacancies of permanent sub-staff without having any power vested in them for engaging such unauthorized persons. These unauthorized temporary employees used to raise industrial disputes seeking regularization of their services. This phenomenon was not exclusive to the respondent bank. The same was also in vogue in other Public Sector Banks. The Government of India in consultation with Ministry of Labour had worked out an Approach Paper for addressing this problem. The Government of India had issued an Approach Paper dated 16.08.1990 directing all the Public Sector Banks to prepare panels of such temporary employees and to utilize their services in leave vacancies on rotation and to absorb them as and when regular vacancies arise subject to their seniority in the panels and rules regarding reservation for SC/ST etc., As per the said Approach Paper only the temporary employees who had put in a minimum service of 90 days or more during the period 01.01.1980 and 31.12.1989 are entitled for the benefits of said Approach Paper. In terms of the said Approach Paper and after entering into a Settlement dated 09.01.1995 as regards the modalities of empanelment with the Recognized Representative Union of the Workmen, panels of such temporary employees were prepared. The Approach Paper issued by the Government of India as a one time measure. The bank was issuing instructions time and again to its branches to utilize the services of only the persons kept on panels for filling up of any leave or temporary vacancy in subordinate staff cadre. It is respectfully submitted that when persons kept on panels are available for filling up of any leave / temporary vacancy, there is no need to any branch to utilize the services of any outsider for any purpose. If it is done by any branch it is against the norms and instructions of the bank and the same does not bind the bank. It is submitted that there is no post of Scavenger in banks. The services of scavengers are required once in a week or a fortnight. When required once in a week or such is the requirement of a scavenger, appointing any person on daily basis as a Scavenger would not arise. It is submitted that there is also no post of Generator Operator in the bank. Installation and operation of generators at the branches is outsourced in the bank. It is for the contractor who installs the generator to employ his own persons for operating the generator and the bank does not have any relationship of employer-employee between the bank and Generator Operator. It is reiterated that the services of the petitioner were never utilized by the bank in any capacity. So the question of paying him any wages much less at the rate of Rs.100/- per day and terminating his services as alleged and contended by the petitioner would not arise. The industrial dispute raised by the petitioner is a speculative claim and untenable. Even if it is presumed without admitting that his services were utilized by the LIC Office Branch, Machilipatnam, the same being in contravention of recruitment norms, it does not bind the bank and does not confer any right on the petitioner to seek regularization of his service. Hence, prayed to dismiss the claim of the Petitioner.

4. Petitioner examined himself as WW1 and marked photocopies of 12 documents i.e., Ex.W1 to W12 in support of his claim. Respondent Management did not examine any witness on their behalf.

5. Perused written arguments of Petitioner.

6. **On the basis of pleadings of both the parties, following issues emerge for determination:-**

I. Whether the action of the Management of Andhra Bank, LIC office branch, Machilipatnam in terminating the services of Shri D. Surendra Kumar, Ex-Attendar with effect from 7.1.2008 is justified?

II. To what relief the Petitioner is entitled?

FINDINGS:-

7. **Point No.I:** Petitioner claims that he was working in the office of Respondent bank since 6.1.2004 on daily wages for Rs.100/- per day till the date of illegal termination from the services on 7.7.2008. Further, Petitioner submitted that he made representation to reinstate him into service by letter dated 3.3.2008 but the Respondent denied to reinstate him and the Petitioner approached the conciliation officer at Vijayawada for resolution of dispute, but the conciliation failed. Further Petitioner claims that Respondent Management used to engage the workmen by direct recruitment through regional branch Managers to meet the works like, sweeping, scavenging, attending to the office staff, generator operator etc., as per requirement of bank and the workman worked in the bank from 10 AM to 5 PM. The Petitioner has rendered sub-staff duties including the scavenging work in the absence of sweepers, generator operation from the date of appointment to till the termination date. The union representative also stated that as per Government of India, Ministry of Finance, New Delhi it was suggested that instructions may be issued to the banks that the services of the part time sweepers/employees may be regularized as full time sweepers/employees and that appointments may be made only on regular basis in the future. The daily wages were getting a fixed wage of Rs.100/- which is contrary to the minimum rate of wages and they were not paid over time wages for the work done. Further, Petitioner claims that the Respondent has denied the engagement of services of Petitioner and they are referring to their records for the purpose of taking such a pleading. It is also submitted that The bank authorities be directed to produce the relevant attendance register, the entry/exit log register, the footage of CC cameras to prove the case of the Petitioner that the Petitioner in fact has been working in the Respondent bank. Since all the said documents are in the exclusive custody of the bank authorities, and unless specific directions are given to produce the same the Petitioner will not be able to get justice.

8. In order to prove his claim the Petitioner has examined himself as WW1 and in his chief affidavit he has corroborated the version of his petition. In his cross examination Petitioner witness WW1 states that, "I have not filed any document to show I worked in the Respondent bank from 2004 to January, 2008. I have not filed any voucher or document to show that the Respondent bank has paid money at rate of Rs.100/- per day. I do not know that if the Respondent bank follows the procedure of calling of names from the employment exchange for utilizing the services on daily wages. I know the Respondent bank prepares a panel of names of daily wagers and regularizes their services as and when vacancy arise. I have not filed panel showing my name." Further, witness states that, it is not true to suggest that Respondent bank has never utilized his services either on casual basis or on temporary basis and therefore, he has not filed any vouchers / documents to show that he was paid wages and his services were utilized. Further, witness states that it is true that the customers of the Respondent bank has no power or authority to certify that he worked in the Respondent bank. Ex.W13 service certificate is forged document and hence, he has not filed their originals. Further he states that he has not filed any document to show that he has worked in a private organization referred in Ex.W1.

9. From the above statement of the witness, WW1 it manifests that Petitioner has not filed any documents pertaining to his appointment, i.e., appointment letter, or payment of wages slips or voucher, although he claimed to have worked in the Respondent bank for 4 years. It is unbelievable that during the alleged service for a period of four years in the Respondent office he could not obtain any document regarding his employment i.e., salary slips, attendance register or duty chart. In the absence of these documents the claim of Petitioner that he had worked in the office of Respondent from 2004 to 2008 is not established. The documents filed by the Petitioner in support of his claim are Ex.W1, is representation dated 3.3.2008 which was addressed to ALC(C), Ex.W2 is an application to ALC(C), Ex.W3 is application to Chairman of Respondent bank, Ex.W4 is application for the post, Ex.W5 is the caste certificate, Ex.W6 is representation of AISMC. Similarly, ex.W7 is a letter addressed to ALC(C). Ex.W8 is notice of ALC(C), Ex.W9 is also a notice of ALC(C), Ex.W10 is also a notice of ALC(C) and Ex.W11 is medical certificate. From these documents discussed above, the claim of the Petitioner does not find any support because that it does not pertain to the appointment of Petitioner in the Respondent's office in the year 2004. The rest of the documents, i.e., Ex.W13 is a bunch of certificates which are said to have been obtained from the customers of the bank regarding work of the Petitioner. These certificates are not issued by the Respondent bank. Hence, these certificates are not relevant piece of evidence and can not be read into evidence. It is settled law that the initial burden of proof to establish the claim of the Petition, lies upon the shoulder of the Petitioner, but the Petitioner failed to discharge his initial burden of proof and his plea that he was appointed in the office of the Respondent bank in the year 2004 is not found proved by his evidence.

10. On the other hand, Respondent has contended that the Petitioner's claim that he was engaged by the Management of LIC Branch of the Respondent Bank to meet the work load in subordinate cadre and he rendered his services as a sweeper and generator operator in addition to the duties attached to the post of sub-staff and his services were terminated by Sri G. Hara Gopal, LIC branch of Respondent bank is incorrect. As per record, the services of the Petitioner were never utilized by any branch of the bank in Machilipatnam as claimed by the Petitioner. When his services were never utilized by the bank, the question of termination of his services would not arise at all. Further Respondent contended that the Petitioner failed to adduce the evidence but to prove his claim that his services were utilized by the bank. Further, Respondent has contended that under the scheme of panel of temporary employees who have put in minimum service of 90 days or more, during the period from 1.1.1980 to 31.12.1989 are entitled for the benefits of said Approach Paper after entering into the settlement dated 9.1.1995 as regards the modalities of empanelment with the Recognized Representative union of the workmen, panels of such temporary employees were prepared. As per the Approach Paper issued by the Government of India it was a one time measure and the bank was issuing instructions time and again to its branches to utilize the services of only the persons kept on panels for filling up of any leave or temporary vacancy in subordinate staff cadre. Further, it is contended that when the person kept on panels are available for filling up of any leave / temporary vacancy, there is no need to any branch to utilize the services of any outsider for any purpose. If it is done by any branch it is against the norms and instructions of the bank and the same does not bind the bank. There is no post of scavenger in the bank. The services of scavengers are required once in a week or a fortnight when such is the requirement of a scavenger, appointing any person on daily basis as a scavenger would not arise. There is no post of Generator Operator in the bank. Installation and operation of generators at the branches is outsourced in the bank. Respondent therefore, contended that the claim of the Petitioner that he had worked as sweeper in the bank, and the generator operator in the absence of permanent employees is false.

11. The Petitioner has not filed any rejoinder to counter to contradict the contention of the Respondent in his counter. As WW1 has himself admitted in his cross examination testimony that he knows that Respondent bank has prepared a panel of the names of daily wagers and to regularize services as and when vacancy arises but he has not filed any panel showing his name. Since the daily wager service has been engaged by the Bank from the panel list, it is doubtful that Branch has utilized his services as daily wager for the alleged period. Thus, the Petitioner failed to discharge his initial burden of proof of appointment in the Respondent bank from 2004 to 2008. In the case of **Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100**, the three Judges Bench of the Apex Court held that "The initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal view that the burden was on the Employer was held to be erroneous." Therefore, in such circumstances, the claim of the Petitioner can not be accepted in the want of cogent and reliable evidence of his appointment in the Respondent bank. Therefore, no question of termination of services of the Petitioner by the Respondent arise in the present matter. The engagement or appointment of the Petitioner in service of Respondent bank could not be established for want of proof of the appointment letter, and a written agreement or by circumstantial evidence of instructions and records of PF contribution of employees. None of the above documents has been produced by the Petitioner in support of his claim. Therefore, in view of the fore gone discussion, it is held that the action of the Management in not engaging the services of Petitioner is justified.

Thus, Point No.I is answered accordingly.

12. **Point No.II:** In view of the finding given in Point No.I, the Petitioner is not entitled to get any relief and this petition is found to be baseless, hence, liable to be dismissed.

This Point is answered accordingly.

AWARD

The action of the Management of Andhra Bank, LIC office branch, Machilipatnam in terminating the services of Shri D. Surendra Kumar, Ex-Attendar with effect from 7.1.2008 is justified. The workman is not entitled to any relief as prayed for. Hence, petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected and signed by me on this the 4th day of January, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Petitioner

WW1: Sri D. Surendra Kumar

Witnesses examined for the

Respondent

MW1: NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of representation dt. 3.3.2008 of WW1
Ex.W2: Photostat copy of application dt.06/2009 of Petitioner
Ex.W3: Photostat copy of application dt.06/2009 to the Chairman, Andhra Bank
Ex.W4: Photostat copy of application for the post dt. 06/2009
Ex.W5: Photostat copy of caste certificate
Ex.W6: Photostat copy of representation of All India Mazdoor Congress dt. 10.8.2009
Ex.W7: Photostat copy of lr. dt. 25.8.2009 by bank to ALC(C), Vijayawada
Ex.W8: Photostat copy of notice of ALC(C) dt.17.8.2009
Ex.W9: Photostat copy of notice of ALC(C) dt.20.8.2009
Ex.W10:Photostat copy of notice of ALC(C) dt. 14.10.2009
Ex.W11:Photostat copy of notice of Dr. Certificate dt. 18.7.2010
Ex.W12:Photostat copy of gazette notification No. S.O.1573(E) dt. 3.11.2005

Documents marked for the Respondent

NIL

नई दिल्ली, 23 फरवरी, 2024

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबंध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (21/2002) प्रकाशित करती है।

[सं. एल - 12012/249/2001- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 23rd February, 2024

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 21/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12012/249/2001- IR(B-I)]

SALONI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023**INDUSTRIAL DISPUTE No. 21/2002**

Between:

Sri S. Rama Krishna,

S/o S. Chengaiah,

Mallavaram (V),

Perumallapalli(P.O.)

Tirupathi Rural Mandal.

... Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office, Region-II,

Tirupathi-517501.

.....Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/249/2001-IR(B.I) dated 21.11.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of India, Tirupathi Zone in dismissing services of Shri S. Rama Krishna, Ex.Messenger, is justified? If not, what relief the workman is entitled?”

After receipt of the reference, it was numbered as ID No.21/2002 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon’ble High Court vide WP No. 6470/2006 & batch wherein Hon’ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon’ble High Court held:-

- “(1) affirming the impugned common order of the learned single Judge to the “extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;
- (2) The further findings and directions issued through the impugned common order are vacated;
- (3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,
- (4) the parties to make appearance before the Tribunal on the given date.”

Hon’ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, “Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR, J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.”

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. The workman filed his claim statement with the averments in brief as follows:

The petitioner, Sri S. Rama Krishna was working as a Messenger in the State Bank of India from 1989 to 1997. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to SC community. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 10 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. Petitioner is having one younger sister and old aged parents as his dependents. Petitioner approached Hon'ble High Court of A.P. where he was asked to approach the authority under ID Act, 1947. He approached the Office of the ALC(C), Vijayawada, who conducted conciliation proceedings, which ended in failure and failure report was forward to the Ministry of Labour and Employment, New Delhi, which was referred to this tribunal, hence this ID. Meanwhile Petitioner was called for an interview for absorption and he was selected during the year 1992 and his name was included in the panel. There were no complaints against the Petitioner. The work performed by the Petitioner is of a permanent and continuous in nature. Though sufficient and plenty of work was available in the Respondent bank the officers have created artificial breaks in the services of the Petitioner. The Respondent has not published seniority list of the category of the Petitioner and retained juniors to the Petitioner without giving priority to the Petitioner. There are no valid reasons for terminating the services of the Petitioner. The workman submitted that ever since the date of his removal from service, he remained un-employee, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for

vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the

ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs.

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 15 documents which were marked as Ex.W1 to W15. Ex.W1 is study and conduct certificate, Ex.W2 is the marks memo of X class. Ex.W3 is transfer certificate. W4 is the caste certificate, Ex.W5 is call letter issued to Petitioner. Ex.W6 is Panel list, Ex.W7 is orders dt.27.10.93 issued by the Respondent giving guidelines to employ the panel workers, Ex.W8 to W11 are the certificates showing working days particulars of Petitioner. Ex.W12 and W13 are notices for conciliation proceedings. Ex.W14 is the minutes of conciliation proceedings, Ex.W15 is failure report of that proceedings. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to

M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

- I. Whether the action of the Respondent Management in terminating the services of the workman, Sri S. Rama Krishna, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?
- II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?
- III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II:-** The workman claims that he had been working with the Respondent Bank in the year 1989 on temporary basis. In the year 1992, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1992 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W8 to W11 are the service certificates according to which the workman has worked for total number of 125 days. In cross examination, WW1 states that, "On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was given appointment as Messenger on temporary basis in the year 1989 for 125 days. I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment as a temporary messenger in the branch. I did not work continuously. I used to work depending upon availability of work in the branch. I applied in response to an advertisement issued by the bank as per the settlements entered between the bank in the year 1992, I was called for interview in the year 1992 and my name was included in the panel of temporary messengers in the year 1992. The panel was prepared basing on the no. of days of service put in by the temporary employees. Some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel. The witness adds that he is not aware of the settlements. "I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank. I am not having any document to show that any of my juniors are continuing in service in the bank." Further, the Petitioner states that, "I did not work for 240 days in any year in my entire service in a single branch." On the other hand, the Respondent has examined MW1 and in his chief examination the witness had

stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that:**

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held:-**

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Ors. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had

worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case of **State of U.P. v. Harish Chandra AIR 1996 SC 2173**, the Hon'ble Apex Court have held:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091**, it was held :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri S. Rama Krishna, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri S. Rama Krishna, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri S. Rama Krishna

Witnesses examined for the
Respondent

MW1: Sri Alluru Rama Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of study and conduct certificate
Ex.W2: Photocopy of memo of marks
Ex.W3: Photocopy of transfer certificate
Ex.W4: Photocopy of caste certificate
Ex.W5: Photocopy of interview call letter
Ex.W6: Photocopy of Panel list
Ex.W7: Photocopy of guidelines issued by Respondent dt.27.10.93 for employment of workers from panel
Ex.W8: Photocopy of service certificate
Ex.W9: Photocopy of service certificate
Ex.W10: Photocopy of service certificate
Ex.W11: Photocopy of service certificate
Ex.W12: Photocopy of conciliation notice from ALC(C)
Ex.W13: Photocopy of conciliation notice from ALC(C)
Ex.W14: Photocopy of Minutes
Ex.W15: Photocopy of failure report

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 23 फरवरी, 2024

का.आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (63/2002) प्रकाशित करती है।

[सं. एल - 12012/155/2000- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 23rd February, 2024

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 63/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12012/155/2000- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023

INDUSTRIAL DISPUTE No. 63/2002

(Old ID No.108/2000)

Between:

Sri G. Abraham,

Aravapeta, 16th Line,

15/307,

Gudiwada-521301

... Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office, Region-II,

Vijayawada – 520 001.

.....Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent: Sri Y. Ranjith Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/155/2000-IR(B.I) dated 31.8.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of India, Vijayawada Zone in dismissing services of Shri G. Abraham, Ex.Messenger, w.e.f. 31.3.97 is justified? If not, what relief the workman is entitled?”

After receipt of the reference, it was numbered as ID No. 63/2002 (Old ID No.108/2000) and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

- “(1) affirming the impugned common order of the learned single Judge to the “extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;
- (2) The further findings and directions issued through the impugned common order are vacated;
- (3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,
- (4) the parties to make appearance before the Tribunal on the given date.”

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, “Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.”

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows:**

The petitioner, Sri G. Abraham was working as a Messenger in the State Bank of India from 1984 to 1995. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to backward class. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 11 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel “found suitable for permanent appointment” by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after 1.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel be valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. “there will be no temporary appointments in the subordinate cadre”, except on a restrictive basis in the specified category, “from amongst empanelled candidates as per existing guidelines of the Bank”. Clause (1) of the agreement excluded categorized persons who are ineligible.

The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated 16.8.1990 stated in its counter affidavit as follows:

“Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered

for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from 1.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the candidates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subordinate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one time and

whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990. In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not binds the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give vide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployed, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01.07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek

absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of

termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 8 documents which were marked as Ex.W1 to W8. Ex.W1 is Paper notification, Ex.W2 is the panel list, Ex.W3 to W6 are service certificates. Ex.W7 is the notification by the Respondent to the employment exchange. Ex.W8 is the inspection and audit report dated 14.7.99. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

- I. Whether the action of the Respondent Management in terminating the services of the workman, Sri G. Abraham, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?
- II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?
- III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II:-** The workman claims that he had been working with the Respondent Bank in the year 1984 on temporary basis. In the year 1989, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1991, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arisen. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination that, "I was not sponsored by any employment exchange. I did not undergo the regular process of selection before my engagement as temporary attendar in the branch. I did not work

continuously. I used to work depending upon availability of work in the branch.” He further states that, “The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. Further Petitioner states, “I did not work for 240 days in any year in my entire service in the bank”. On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn’t come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225**, the Hon’ble Apex Court have held that:

“Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service.”

“Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F”

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999**, three judges bench of Hon’ble Apex Court have held:-

“In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Ors. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not.”

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank’s service as a permanent employee unless the vacancy is available at the stage

of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case of **State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held:-**

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held :**

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri G. Abraham, Ex-Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri G. Abraham, Ex-Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri G. Abraham

Witnesses examined for the
Respondent

MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

- Ex.W1: Photocopy of newspaper notification
Ex.W2: Photocopy of panel list
Ex.W3: Photocopy of service certificate
Ex.W4: Photocopy of service certificate
Ex.W5: Photocopy of service certificate
Ex.W6: Photocopy of service certificate
Ex.W7: Photocopy of notification by the Respondent to the employment exchange
Ex.W8: Photocopy of lr. Dated 14.7.99

Documents marked for the Respondent

- Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9: Photocopy of statement of 1989 Non-messenger panel
Ex.M10: Photocopy of statement of 1992 panel
Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 23 फरवरी, 2024

का.आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन ई रेलवे के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (48/2017) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-109]

सलोनी, उप निदेशक

New Delhi, the 23rd February, 2024

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 48/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of NE Railway and their workmen.

[No. L-12025/01/2024- IR(B-I)-109]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 48/2017

BETWEEN

The working President,
Rail Sewak Sangh, 49 Tilak Nagar
Lucknow

..... Workman

AND

1. The Divisional Railway Manager (P)
NE Railway Lucknow-226001

2. The Sr. Divisional Electrical,
NE Railway Lucknow

..... Respondent

AWARD

By order/letter dated 26.10.2017 following dispute has been referred to this Tribunal.

“Whether the action of management of Divisional Manager (P), NE Railway in ignoring the seniority of Sri Ramesh Kumar & 7 others workmen w.e.f. year 1998-18.08.2013 and so on is just and proper? if not, what relief the concerned workmen are entitled to and from what date?”

Accordingly ID case No. 48/2017 registered before this Tribunal.

Case of claimant.

On 12.03.2019 on behalf of workmen statement of claim was filed inter-alia stating therein that namely Ramesh Kumar, Sheokan Kaushik, Saty Narain Sharma, Ram Kumar, J.K. Siddiqui, Ram Ujagar, Anupam Kumar Srivastav and Mohd. Arif all of them were initially appointed as khallasi and were later, promoted under 25% quota to the post of the then designated as cell fitter Class III Cadre Post in scale of Rs. 3050 to Rs. 4590/- [R.S.] w.e.f. 18.08.1998 under opposite parties.

Further while workmen were working as cell fitters, their cadre of cell fitter was abolished by the management in administrative interest and the concerned workmen were absorbed against the post of Train lighting fitter which was the post of same grade of skilled fitter in scale of Rs. 3050-4590 (R.S.) w.e.f. 14.07.2003, equivalent to the post of cell fitters.

That the management while posing aforementioned workmen against the post designated as Train lighting fitter also allowed the benefit of annual increments which they had earned during the period they rendered their services in cadre of cell fitter, but the opposite parties committed a error in ignoring their seniority for the period from 18.08.1998 to 14.08.2003 during which they had performed their working in cadre of cell fitter which is same as of train lighting fitter, both failing under the same department under the establishment of O.P. No. 2.

That the opposite parties later on again merged the seniority of Train Lighting with Air Conditioning Staff in the year 2003 but ignoring the seniority of concerned workmen for the period i.e. 1998 to 2003 during which they had worked as cell fitter under same department and same head of department i.e. O.P. No. 2.

That, the above mentioned act of opposite parties thereby ignoring the seniority of workman for the period from 1998 to 14.08.2003 at the time of said merger with Train lighting and Air Conditioning has adversely effected the seniority

position of concerned workmen and caused in their supersession from their much juniors even to those who were brought promoted in skilled grade of Rs. 3050-4590 much after to the workmen concerned where as in similar situation the cell fitters working at N.E. Railway, Gorakhpur have been extended the benefits of seniority for the period they worked as cell fitter but these concerned workmen have been discriminated.

That, due to aforesaid Act of opposite parties these workmen have been superseded by their juniors and suffered loss in promotion against the post of skilled Grade-II highly skilled and further against the post of master crafts man, as such the concerned workmen are also entitled to be promoted from the date their juniors have been promoted to the post of skilled Gr. II, Gr-I and master crafts man (m.c.m.) with consequential benefits as admissible under the Railway Rules.

Prayer

Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may very kindly be pleased hold that the action of Management of Divisional Railway Manager (P)(N.E. Railway in ignoring the Seniority of Sri Ramesh Kumar and 7 others w.e.f. 1998-18-08-2013 and so on is neither just nor proper and the concerned workmen are liable to be held entitled for promotion to the post of skilled Grade II, High Skilled Grade I and Master Craftsman (M.C.M.) from the date their Juniors in skilled grade have been promoted to the post of grade II, Grade I and Maser Crafts Man (M.C.M.) with consequential benefits in the interest of justice.

Case of respondent

On 25.06.2021 on behalf of respondent written statement filed in which, it was pleaded as under:-

1. That the workmen namely Ramesh Kumar, Sheokan Kaushik, Saty Narain Sharma, Ram Kumar, J.K. Siddiqui, Ram Ujagar, Anupam Kumar Srivastav and Mohd. Arif were promoted as Cell Fitter (Rs. 3050-4590) under 25% High School Quota.
2. That the averments as made in para 2 of the claim statement are wrong, hence denied. The correct facts are that the above mentioned workmen were promoted as per their existing AVC from the post of Cell Fitter to Train Lighting Fitter (TLF) (Grade Rs. 3050-4590) w.e.f. 14.07.2003 after passing prescribed Trade Test. Accordingly applicants have been assigned their seniority in Train Lighting Fitter Cadre w.e.f. 14.07.2003. The true copy of office order dated 14.07.2003 is annexed herewith as Annexure No. 1.
3. That the averments as made in para 3 of the claim statement are wrong, hence denied. In reply thereto it is submitted that as per existing AVC, applicants were promoted from the post of Cell Fitter to Train Lighting Fitter (TLF/Rs. 3050-4590) w.e.f. 14.07.2003. As such, there is no justification for giving seniority benefits of cell fitter w.e.f. 1998 to the applicants. In this respect, a copy of letter dated 03.03.2009 issued by DRM(P), NE Rly, lucknow is annexed herewith as Annexure No. 3.
4. That the averments as made in para 4 of the claim petition are vehemently denied. In reply thereto it is submitted that applicants were working as Cell Fitter from 1998 to 2003. It is submitted that as per the then existing AVC, the applicants could not be given the seniority benefit in Train Lighting Fitter (TLF) Cadre.
5. That the averments as made in para 5 of the claim petition are vehemently denied. In reply thereto it is submitted that the applicants were promoted in the year 2003 in the TLF cadre of Electrical Department of Lucknow Division. Accordingly they had been given the seniority/promotional benefits. Now there is no justification to give them the seniority benefits after adding Cell Fitter Service in TLF Cadre. It is unjustified hence vehemently denied.
6. That the averments as made in para 6 of the claim petition are denied. In reply there to, it is submitted that the applicants have been extended the benefit of seniority w.e.f. 2003. There is no justification for giving benefits of seniority w.e.f. 1998 as claimed.
7. That in view of the averments as made above the claim petition deserve to be dismissed with costs.

Finding & conclusion.

From the perusal of record the following facts emerged out after filing of claim statement, statement of defence.

On 22.11.2022 an order was passed quoted herein below:-

Matter taken up in revised list.

Parties absent.

Last opportunity is granted for rejoinder

List on 29.12.2022,

On 12.09.2022 an order was passed quoted as under:

None present on behalf of workman.

Heard Sri Devendra Nath Advocate for respondent, and perused the record specially the application for recalling. The order dated 13.03.2020 and taking written statement on record.

From the perusal of the said application cause shown therein, valid so in the interest of justice order dated 13.03.2020 is recall.

Written statement on behalf of respondent taken on record. Claimant/workman may file reply on or before the next date of listing.

List on 22.11.2022 for filing of reply by the claimant/workman.

On 29.12.2023 an order was passed quoted reads as under:-

None for appellant/workman.

Sri Narendra Nath Advocate for respondent.

In spite of the last opportunity granted to claimant/workman, rejoinder affidavit has been filed.

Accordingly list for hearing on 27.03.2023.

On 20.06.2023 an order was passed reads as under:-

Matter taken up in the revised list.

None for claimant.

Sri Narendra Nath Advocate for respondent

Last opportunity is granted to file rejoinder.

List on 27.10.2023. Office to issue notice to claimant.

On 27.10.2023 an order was passed reads as under:-

None for parties.

In spite of notice claimant is not present.

So list the case for ex-parte order.

List on 11.12.2023.

Today (11.12.2023) when the case was taken up in the revise list the workman/legal representative are not present in spite of notice.

Taking into consideration the above said fact that as till date no rejoinder has been filed by the claimant as per the reference dated 26.10.2017.

Thus in view of the above said facts as well as the law laid by the Hon'ble High Court in the case of **V. K. Raj Industries v.**

Labour Court (1) and others 1981 (29) FLR 194

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164 Hon'ble Allahabad High Court** has held as under.

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519**, wherein it has been held as under

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed"

As the workman has not filed any rejoinder, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and, the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 27 फरवरी, 2024

का.आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण मध्य रेलवे, के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (41/2005) प्रकाशित करती है।

[सं. एल - 41011/51/2004- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 27th February, 2024

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.41/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of South Central Railway and their workmen.

[No. L-41011/51/2004- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 4th day of December, 2023

INDUSTRIAL DISPUTE No. 41/2005

Between:

The General Secretary,
South Central Railway Catering Helpers and
Workers Union, 9-3-356, Regimental Bazar,
Secunderabad.

..... Petitioner

AND

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Personnel officer,
South Central Railway,
Secunderabad.

.... Respondents

Appearances:

For the Petitioner : Sri U.D. Jai Bheema Rao, Advocate

For the Respondent: Sri W. Satyanarayana, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 41011/51/2004-IR(B-I) dated 29.4.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of South Central Railway and their workman. The reference is,

SCHEDULE

“Whether the industrial dispute raised by South Central Railway Catering Helpers and Workers Union against the Management of South Central Railway over alleged illegal removal of Railway Catering Helpers justified? If so, to what relief the concerned workmen are entitled?”

The reference is numbered in this Tribunal as I.D. No. 41/2005 and notices were issued to the parties concerned.

2. **The averments made in the claim statement are as follows:**

The South Central Railway is an industry in the sense of Sec 2(j) of the Industrial Disputes Act and Catering Helpers are employed for reward to serve food and beverages to the passengers who are customers of the Railways. As such they are workmen in the sense of Sec.2(s) of the I.D.Act. The petitioner submits that respondent is a Central Government concern that has monopoly of Railway service in its area of operation. It employs thousands of employees for the purpose running the trains, maintenance of the tracks, trains and stations, sale and checking of tickets, booking and disbursement of parcels, cooking food and serving the passengers, repair and maintenance of the locomotives, etc. Each and every one of these activities is essential for the service the respondent provides, and therefore also for the functioning of the respondent establishment. It is submitted that the present dispute is concerned with catering of food and beverages to the passengers. This service is provided on the platforms as well as in the trains. Catering Helpers are the workmen through whom this service is provided by the respondent. The petitioner Union which was registered in the year 1996, is the only Union of Catering Helpers in the respondent establishment. Almost all of the Catering Helpers have put in ten to fifteen, and in some cases up to 20 years of continuous service with the respondent. It is submitted that while this work of Catering is perennial and essential in nature, the Respondent has sought to dissociate itself from the workmen concerned, namely the Catering Helpers, in order to avoid the liability to provide them the wages and service conditions applicable to regular workmen of the Railway establishment. Consequently two categories of intermediaries have been created on paper between the respondent and Catering Helpers. These are the Vendors and Bearers. The Vendors are supposed to be licensees who are allotted a certain fixed number (two or three, usually) of food-stalls in the Railway station. The Bearers similarly carry the license to supply food on specified trains. They are paid a commission on the sales allegedly effected by them. The actual worker, the Catering Helper, is shown in this scheme as an employee of the Vendor/Bearer, as the case may be. Each Vendor/Bearer on paper employs two or some times more Catering Helpers. It is submitted that this is a mere paper arrangement, a fictional set up meant to hide the fact that catering is the work of the Railways, and that it is done for the Railways by the Catering Helpers. The Catering Helper is the ubiquitous person seen on every Railway platform and train, selling food stuffs and beverages to the passengers. The Vendor/Bearer has no say in the determination of the menu. The Chief Catering Inspector who is an officer of the Railways decides the matter. The Vendor/Bearer have no connection with the cooking of the menu thus determined. It is cooked in the kitchen of the Railways attached to the Refreshment Rooms, by employees engaged by the Railways. The Vendor/Bearer does not even collect the food thus cooked to distribute it to the Catering Helpers allegedly employed by him. Each morning the Catering Helpers directly go to the Refreshment rooms run by the Railways in order to pick up the food they have to sell to train passengers on the platform/in the train. Not only what is to be sold, but even how much is to be sold is decided by the CCI. Whatever quantity of idli, vada, etc., that the CCI decides should be sold through a stall or in a train has to be taken by the Catering Helpers. It is submitted that quantity of food is handed over to the Catering Helpers directly by the Manager of the Refreshment Room, who is a Railway employee, subordinate to the CCI. The Vendor/Bearer is nowhere in the picture. It is submitted that after selling the food-material thus collected from the Refreshment Room, the Catering Helper goes back to the Refreshment Room of the respondent in the evening and hand over the cash earned by way of sale of food-stuffs. The Commission to be given to the Vendor/Bearer is deducted and given back by the CCI or the Manager to the Catering Helper, from whom the Vendor/Bearer gets it. Thus, there is no work or service that is contracted out to the Vendors/Bearers. The food is prepared by the kitchen staff of the respondent establishment upon the direction of the CCI. It is handed over to the Catering Helpers by the Manager of the respondent's Refreshing Room to be sold to passengers. The sale-proceeds are directly taken by the Railway yards from the Catering Helpers, and the commission of the Vendor/Bearer is deducted and handed over to the Catering Helper who in turn hands it over to his supposed employer. Thus, the Vendor/Commission Bearer is a myth brought in to defeat the rights of workmen. He is not a real licensee who engages labour directly answerable to him for the purpose of serving food-stuffs to the passengers. He is a paper arrangement, and is paid a commission for helping the Railways to exhibit the Catering Helpers as some one else's employees. It is submitted that the respondent has also issued identity cards and medical certificates to the Catering

Helpers which show them to be Catering workmen of the Railways without any reference to the so-called Vendor/Bearer. It is submitted that at the relevant time there were about 800 Catering Helpers in the various stations of the South - Central Railways. They continued in service even though the Vendor/Bearer might have changed. While so, the Railways got the idea of getting rid of Catering establishment owned altogether by creating a wholly owned Corporation and transferring its assets to the Corporation. Thus the IRCTC was born. It is nothing but a creature of the respondent. Since all its Directors are senior serving Railway officials. Petitioner further submits that at that time the Catering Helpers became apprehensive that in view of their fictional status as employees of a contractor or licensee. They may lose their jobs notwithstanding the prolonged years of service put in by them on the work of the respondent. Hence the Petitioner union made a complaint to the Regional Labour Commissioner (Central) seeking official's intervention in the matter. This complaint was submitted on 10.10.2002 When the respondent removed all the 800 Catering Helpers in the early part of the year 2004. Then, Petitioner reiterated the complaint and requested the RLC(C) to take up the matter of the removal of the 800 Catering Helpers from service. The Catering Helpers were removed most unceremoniously, without notice of any kind or compensation Chapter V B of the I.D.Act and all its employees are entitled to the protection of Sec 25-N and Sec.25-FF r/w Sec 25-N in the case of transfer of undertaking. The petitioner sought absorption of the Catering Helpers in the new set up, which is also wholly owned by the Railways though nominally under a Corporation. On the direction of the RLC(C), the Asst. Labour Commissioner (Central) admitted the matter for conciliation, but as no progress was discernible, he sent his final report, resulting in the present reference. It is submitted that the petitioner is entitled to a declaration that the Catering Helpers are in law deemed to be direct employees of the Respondent and hence their unceremonious termination from service after serving for 10 to 15 years without following any lawful procedure is illegal. In the event of transfer the Catering establishment to IRCTC, the Catering Helpers are entitled to absorption in the new Catering establishment, or in some other post in the respondent establishment with no less beneficial service condition. It is therefore prayed that to declare the Catering Helpers, members of the petitioner Union, are in fact direct employees of the Respondent, and that the action of the respondent, pursuant in not absorbing them in the same position but instead removing them without following the procedure laid down in the I D Act is illegal, null and void.

3. Respondent filed counter denying the averments of the Petitioner as under:

The respondent denies that South Central Railway employed catering helpers. The Commission Vendors/bearers are engaged by the Railway administration to sell edible set etc., on Commission basis on sales on Railway station premises and on trains etc., In this connection, the Commission vendors/bearers permitted to engage one or two helpers, each of their own choice, for the purpose of helping their sales and for cleaning the vessels, etc.. But these helpers do not remain fixed at Railway stations, platforms, etc., and frequently changing. But the Railway ensures that the Commission vendors/bearers, do not engage persons with criminal background and also persons having infectious diseases by way of obtaining police verifications and medical certificates to this clearance at their own costs in the security and hygiene of the passengers. It is submitted that categorically instructions are circulated by the Railway Board, "the helpers do not come under the administrative control of the railways and railways do not maintain any record of their attendance etc.. Once the Commission vendors/ bearers are absorbed, or removed such helpers cease to render any service." It is further submitted that catering service is rendered through a two tier pattern, i.e., departmental bearers who are regular employees of railways and Commission vendors /bearers. The departmental staff, i.e., bearers who are regular employees of railways, do not engage any helpers. The Railway administration facilitates the entry of helpers engaged by the Commission vendors / bearers by way of issuing provisional identity cards issued locally by the station. Catering inspectors so as check the menace of ticket list entrants, Hawkers. These helpers conduct and medical validity against any infectious diseases, are ensured by the local station Catering Inspector by verifying their police verification and medical examination certificates, brought at their own cost before issuing any provisional identity cards to helpers. The name of the Commission vendor or bearer is clearly indicated on the provisional identity card of helper, clearly indicating thereon under whom he is working. In contrast the identity cards to the permanent staff i.e., bearers, and also to the Commission vendors / bearers are issued by the divisional commercial offices controlling the catering unit. It is submitted by the respondent that the quantity and particular soft edibles/ items meant for sale are entered in the issue registers rule taking their signatures and issued to the Commission Vendors /bearers directly and in turn the Commission is calculated and paid directly to them under signature in the Commission Payment register. As such, the helpers do not directly work under the administrative control of the respondent. Respondent further submits that a Commission vendor is engaged for vending the edibles etc., on the platforms and the Commission bearer is engaged for vending edibles etc.. on the trains by the Railway administration. The contract comes into effect only after the said Commission vendor/bearer remits the security deposit as decided by the Railway administration from time to time and also upon undergoing medical examination conducted by the Railway medical authorities at their cost and also enters into an agreement. A helper engaged by a Commission vendor/bearer is not permitted to deal with the passengers directly. It is submitted that the Catering Inspector In-charge of the catering unit decides the quantity and menu and variety of preparations basing on the demand and movement of the trains etc.. There is a permanent network for procurement, storing, cooking, packaging and distribution and service of the preparations. The services of Commission vendors, bearers are also utilized in the sale of the finished products under strict accountability. It is submitted that quantity and particulars of the edible items meant for sale are entered in the Issue Registers, duly taking their signatures and issued to the Commission vendors directly and in turn the Commission is calculated and paid directly to them under signature in the register. The helpers do not directly work under the administrative control of railways. The catering

inspectors who is incharge of the catering unit, decides the quantity, menu and variety of preparations based on the demand and movement of trains. There is permanent network for procurement, storing, cooking, etc.. and the services of Commission vendors, bearers are also utilised in the sale of finished products under strict accountability. The edibles meant for sale are directly issued to the Commission vendors there are and it is entered in the Issue Registers and Commission is paid by taking their signatures in both the registers i.e., the name of the Commission Vendors there is conspicuously indicated there on the provisional identity cards of the helpers under whom he is working. It is submitted that the Indian Railway Catering and Tourism Corporation was incorporated under the Companies Act, 1956 as an extended arm of Indian Railways so as to upgrade, professionalise and manage the catering and hospitality services at Railway stations, Trains and other locations and to promote domestic and international tourism through development of hotels, information and commercial publicity and global reservation systems. The Indian Railway Catering and Tourism Corporation is a special purpose vehicle to explore the and exploit under utilised assets of Indian Railways by forming joint ventures, alliances, networks associated and subsidiary Companies and stimulate private entrepreneurship and investment in hospitality business, the Indian Railway Catering and Tourism Corporation Food primarily serve the rail users and passengers through value added services and strengthen Indian Railways linking age. With travel and tourism industry with certain terms and conditions consequent on pharmacy consequent and formation of Indian Railway Catering and Tourism Corporation, the regular staff members of departmental catering establishments on South Central Railway were deemed deputed to the IRCTC. For continuity of catering services with provision of Provision for their opting for other departments within the Railways. The absorption of eligible Commission vendors bearers into Railway Group D service is also about to be completed so that the IRCTC can go ahead with its own methodology for materialising the said obligations entrusted to it. Further, it is submitted that as per the categorical instructions circulated by the Railway Board, the helpers i.e., the applicants herein, do not come under administrative control of the Railways, Railways neither maintain a any record of their attendance nor control over them. Railways neither appointed them nor paying anything to them. They are purely working for Commission vendors/Bearers. The identity cards in medical certificates issued to them only to avoid unauthorized persons to enter the platforms, Railway premises so as to secure the safety and hygiene of the passengers. Therefore, the reliefs that are sought by the petitioner in this case is not maintainable. It is further submitted that as the railways have never appointed any of the petitioners, the question of removal of the Railway catering helpers by the South Central Railway does not arise. It is therefore prayed that in view of the above submissions, the claim statement is not maintainable and the same may be dismissed with costs.

4. Petitioner union examined six witnesses i.e., WW1 to WW6 in support of their claim and marked documents Ex.W1 to W213. Respondent examined two witnesses and got marked eight documents i.e., Ex.M1 to M8.

5. Heard both parties.

6. **On the basis of the rival pleadings of both the parties the following points emerges for determination:-**

I. Whether there existed relationship of employee and employer between the Petitioner (Union) and South Central Railway, Secunderabad? If yes, its effect?

II. To what relief the Petitioner/claimants entitled for?

FINDINGS:-

7. **Point No.I:** The Petitioner union claims that it was registered in the year 1996 and is the only union of catering helpers in the Respondent establishment. Almost all the claimants i.e., catering helpers have put in 10-15 years of service and in some cases upto 20 years of continuous service with the Respondent. The Petitioners/helpers provide the services on platforms as well as in the trains for catering the food and beverages to the passengers and their work of catering is perennial and essential in nature. Further it is claimed that there were about 800 Catering Helpers in the various stations of the South - Central Railways, Secunderabad and the Respondent had also issued identity cards and medical certificates to the catering helpers which shows that they are catering workmen of the Railway without any reference to the so called vendor / bearer. But the Respondent Management South Central Railway has terminated the services of the Petitioner workmen illegally and Petitioners are as per law, direct employees of the Respondent and they are also entitled for absorption in the new catering establishment i.e., IRCTC of the Respondent.

8. In order to prove their claim the Petitioners/Catering Helpers Union has adduced oral as well as documentary evidence:-

The perusal of the evidence on record goes to reveal that the Petitioner has examined WW1 Sri Gundu Raju, to prove their claim and in his chief examination affidavit witness has supported the averment of the petition and also proved the document Ex.W1, copy of complaint filed by the Petitioner to the RLC(C), Hyderabad, Ex.W2 copy of the Petitioner's rejoinder to the Respondent's remarks submitted to the conciliation officer, Ex.W3 is final report submitted by the ALC(C) to the Government of India, Ex.W4 to Ex.W163 identity cards and authorizations issued to helpers by the Respondent. The witness WW1 has been cross examined by the Respondent counsel, wherein witness states,

"I did not file the copy of registration of our union in this case. I am the General Secretary of the union and I am entitled to file case on behalf of the workers. No authorization is required.....The workers were not given any appointment letter except the identity cards. There are commission vendors/bearers under the Railways Management apart from Departmental bearers. The commission vendors and bearers will get commission on the sale or catering of food. The claimant duty is to cater and sell the food and they are entitled to commission. The vendors/bearers were permitted to engage helpers and they get commission from the Railways. There is no fixed salary to the workers it depends on the sale of food articles. The commission was paid daily to the workers on the basis of the sales. The claimants are not workers under the commission vendors. The commission vendor /bearer are also issued the identity cards. Similar cards are issued to them. There are permanent workers under the catering Department and they were paid monthly salary as per their scale." Further, WW1 states that, "The Claimants were not given any facilities like Provident Fund, medical or free passes in the year which were extended to permanent employees." Further, WW1 states that, it is not true to suggest that there is no privity between the Respondent and the claimants and Respondent engages commission vendors / bearers and the claimants were engaged by the commission vendors / bearers.", WW1 also states, "it is mentioned in the claim statement that about 800 catering helpers were removed in the early part of 2004. It is true that it is mentioned in my affidavit in page 3 that we were removed in the year 2002."

The witness WW1 has also filed additional affidavit of chief examination and in chief his statement he has exhibited proved the documents Ex.W164 to W213 i.e., medical certificates issued to the workmen by Sr. Medical Superintendent of Respondent hospital, South Central Railway. The witness WW1 was further cross examined by the Counsel for Respondent and in his cross examination WW1 states,

"I have filed the medical fitness certificates, identity cards, on duty pass. The medical fitness certificates filed by me have been given by the Railway Doctors which are marked Ex.W164 to W213." Further, WW1 states that, "I have not received any appointment letter from the Railway Department. The witness volunteers it is with the Railway Department. I have not made any representation to the Railway authorities for issuance of appointment letters.No pay slips were issued to us, but we were getting commission only after obtaining signature by the Railway Department. I am assisting the Manager of the catering Department and I am working as per the direction of the Manager of the catering Department. I have not filed any document to show that I am working under the Manager."

Therefore, from the above statement of the witness WW1 and perusal of the documentary evidence produced by the Petitioner it delineates that, Petitioners have not filed any appointment letters in order to prove the claim that they are employees of Respondent establishment without any intermediary and relationship of employee and employer exists between the Petitioners and the Respondent. Moreover, WW1 himself admits in cross examination that they had worked as helpers for catering at the Railway stations and they were not given any appointment letters by the Railway Department except Identity Card. Further more, the other documentary evidence which have been filed by the Petitioner workmen are the medical certificates stated to be issued by the Senior Medical Superintendent of the Respondent Hospital. The purpose of issuance of the medical certificates to the Catering Helper workmen was to protect the passengers from any infectious or communicable diseases while serving foods and beverages at station. Thus, medical certificates have a limited purpose and their medical certificates are not proof of employment in the Respondent establishment. Further, the copy of identity cards and duty pass filed by the Petitioner stated to have been issued by the Respondent to the Catering helper are in nature of license for limited purpose and for limited time which may be withdrawn any time. These are issued by the competent authority of the Respondent to the helpers of the commission vendors/ station bearers with the purpose to check and prevent unauthorized person entrance at the Railway premises for catering and food supplies at stations and in trains to the passenger. These documents i.e., medical certificates and identity cards/ duty passes are not proof of appointment or employment in the Respondent establishment. Therefore, the claim of Petitioner is not proved by the testimony of witness WW1.

9. Furthermore, Petitioner has examined Sri Anwar Hussain, as WW2 and this witness has also supported the averments of Petitioners in his chief examination affidavit and also exhibited documentary evidence Ex.W4 to W15 i.e., identity cards and authorization. But, in his cross examination WW2 states,

"The Respondent Railways engaged licensed vendors for sale of food material. The licensed vendors also used to engaged labourers for sale of food stuffs on the platform. Apart from the licensed vendors the railways directly selling food stuffs through the helpers. The helpers are paid 3 to 4% on the sale of food stuffs." Further, WW2 states, "we were not given appointment letters as helpers. The licensed vendors also got photo identity cards. The labourers engaged by the licensed vendors were not given identity cards. The photo identity cards filed by the Petitioner discloses the designation as Asst. vendor, Vendor Asst., or commission vendor and on some cards, 'helper' to vendor. It is also mentioned in some cases as Helper to Vendor and helper.....The catering people did not obtain our signatures while delivering the food stuffs. We were not given the facility of Provident Fund or medical facility etc.."

Thus, from the above statements of WW2 it is clear that the Petitioners were working as labourers/ helpers to the licensed vendors for sale of food stuff at platform as they were paid commission of 3 to 4% on the sale of food material. Respondent Management has not issued any appointment letters to Petitioners who worked with vendors

as helpers. Therefore, the Petitioners' claim that they are the employees of the Respondent South Central Railway has not been established and proved by the evidence of WW2 witness.

10. Further, the Petitioner has examined Sri Narmeta Bucheeru as WW3, who in his affidavit of chief examination has supported the averments made in the Petition. In his cross examination the WW3 states,

"I worked as a commission vendor at Railway station, Kazipet. I was given identity card. The identity card was issued by the Assistant Commercial Manager. We used to sell food articles on the platform. We used to get commission on the sale proceeds. I was given appointment in the railways on the basis of the orders by the Hon'ble Supreme Court. I did not file the order. I am having the same. We did not engage any helpers in selling the food stuffs." Further, the witness states, *"identity cards were also issued to the helpers. The helpers were appointed by the Railways. We have no concern with the helpers. We used to sell food stuffs directly taking form the Railway canteen.....I did not file any record showing that the helpers are absorbed in the Railways."*

From the said statement of WW3, it manifests that the he was issued appointment letters by the Respondent and he states that he used to get Commission on the sale proceeds at the platform. Although the witness claimed that he was given appointment letter on the basis of the orders by the Hon'ble Supreme Court but no such document i.e., copy of order or appointment letter has been filed and proved in evidence to fortify the claim of appointment in the Respondent Railways establishment. Therefore, from the said testimony of the witness WW3, Petition averments that the Petitioners are employees of Respondent establishment has not been established or proved.

11. Furthermore, the chief affidavit of witness WW4-Sri Shaikh Sadiq Vali and WW5- Sri Solomon also has been filed to support the claim. But these witnesses have not been produced for cross examination. Therefore, the testimony in chief of WW4 and WW5 can not be read in evidence as per provision of law.

12. Furthermore, chief affidavit of Witness WW6 – Sri D. Subbaiah has been filed and in the chief examination affidavit, the WW6 states,

" he was engaged as a commission vendor/bearer by the Respondent at Cuddapah from 1973 to 2002. As Commission Vendor he was authorised to sell food stuffs on the Railway platform. From 1980 he was engaged by Respondent as Commission Bearer. Further the witness states that while the vendors would sell at the stalls, the bearers would sell in the trains by moving up and down the platform. Like vendors the bearers also take food stuff from the Raiwlay Refreshment Room. The bearers were appointed by the Railways and issued an identity card by the Railways. However, after serving the Respondent for several years he was finally absorbed into the Group-D of operating Department in Guntakal Division in the year 2003. Similar to him some other verndors and bearers were also absorbed into the same Department by the Respondent."

Further, the witness has also testify the documents that have been marked Ex.W152 to W158.

This witness WW6 was cross examined by the Respondent counsel and in his cross examination WW6 states, *"In the beginning I worked as helper of the vendor under one commission vendor (by name Satyam). At the time I was not given any identity card or appointment order either by the commission vendor or Railway authority. Subsequently I became commission vendor. I used to get commission from Railway Department for the material sold by me. It is true that I used to purchase the material from the Department and after selling the material, whatever the material left I use to return it to the Department and Department used to give commission basing the material sole by me. I also engage one or two helpers to sell the material. It is correct that the helpers which I engage were paid by me. The Railway Department used to give identity cards to the helpers also to avoid unauthorized vendors and ticketless travelers. It is correct that there are two types of vendors, one is Departmental vendors and another is commission vendors. It is also correct that Department vendors used to get salary form Department. It is correct that Department vendors do not have any helper."* Further, witness states that, *"I have stated in my affidavit that helps appointed by the commission vendors were appointed as class-IV employees in the Department. I have not filed any documentary proof that commission vendor's helpers were absorbed as class-IV employees in the Department. It is correct that only senior commission vendors were absorbed as class-IV employees by the Railway authorities.it is correct that on the termination of the contract of the commission vendors, the services of the their helpers would seized to be terminated automatically. It is correct that the Petitioners were neither appointment by the Railway authorities nor they were terminated by the Railway authorities."*

The testimony of WW6 reflects that initially he worked as a helper off vendor and later on became commission vendor and he had engaged one or two helpers to sell the product material. Further, witness admits that the helpers whom he had engaged were paid by him. The Railway Department used to give Identity Card to helpers to avoid unauthorized vendors and ticketless travel. Thus, the Petitioners' claim do not find support from the testimony of WW6.

13. Furthermore, statement of the witness WW6 manifests that no helper of the commission vendors was absorbed as a class-IV employee in the Railway Department. No such documentary proof filed and proved by the Petitioners that the Petitioners were employees of Respondent. The Petitioners used to work as helpers to the commission vendors and they were getting their wages/commission from commission vendors. It is also clear that

there was no privity of contract between the Petitioners i.e., vendors helpers and Railway Management. Thus, from the aforesaid discussed oral and documentary evidence produced by the Petitioners, Petitioners utterly failed to prove and establish that there existed relationship of employee and employer between the Petitioners and the Respondent South Central Railway, Secunderabad. Therefore, in view of the fore gone discussion, I am constrained to hold that the Petitioners were not employees of Respondent and there is no employer and employee relationship between these two and also no privity between two parties.

In this context, I would like to make reference of decision of Hon'ble High Court of New Delhi in the case of **The Work Force Hired On Causal ... vs "To Prove A Contract Of Employment ... decided on 5 July, 2008 ID No.01/2001 between Sri Vijaya Bahadur Singh and others vs. M/s. Guru Teg Bahadur Hospital Shahdara, Delhi, wherein the Hon'ble High Court have held,**

"19. In cross- examination the workers admitted that management has never issued any appointment letter to them. They could not disclose the name of the person who was disbursing salary to them. Though they claimed that their attendance was marked in the attendance register of hospital but no sufficient conclusive evidence on point is adduced. The workers have neither in their affidavits nor in their cross- examination specified the name of any officer of management who used to mark their attendance or to supervise their work. There is nothing on record to show that the management was exercising any control of whatsoever nature on these claimants.

20 In the affidavits, it is affirmed by the claimants that they were working under supervision of some Hawaldar of GTB Hospital but they failed to adduce any corroborative evidence showing that the so called Hawaldar was employee of management. It is further pleaded by the workers that they were being paid wages directly by the hospital prior to 1998 and after April, 1999 till 02.05.2000 but again the contention is not supported by any evidence. The claimants neither themselves tendered any documentary or other evidence to substantiate their claim that their work was supervised and controlled by the hospital employees nor could establish that they were being paid wages directly by the hospital. In cross- examination, it is admitted by the workers that the management never issued any appointment letter to them. Ld. AR for workers has placed strong reliance on a photocopy of some attendance sheet bearing the name of GTB Hospital and another photocopy showing 83 security guards on duty in March, 2000 counter signed by Dr. P.K. Malik. So far as the first document is concerned, it is though on a sheet bearing name of GTB Hospital, but it is neither signed by anyone authorised on behalf of hospital nor there is anything to show that it actually pertained to the hospital. From this single document, it cannot be concluded that the attendance of the claimants was being marked by the hospital in its own records along with other permanent employees. The other document which bears the signatures of Dr. P.K. Malik does not cite at any point that the persons mentioned therein were regular employees of the hospital or were working under the control and supervision of the hospital. Besides this, the document relates only to one month i.e. March, 2000. The document at best can show the claimants in employment of management for month of March, 2000. By no stretch of imagination, it can be convassed on strength of the documents that the claimants had been in employment of the management for a period of one year immediately preceding their alleged cessation of services or that they had completed 240 days of service with the management as its employee. Even otherwise, the averment made by the claimants in their affidavits and statement of claim with regard to their having worked with the management is vague and inferential in nature. The evidence led by the workers do not prove the kind of control on them as stipulated under law nor it establishes any relationship of employer and employee between management and the claimants."

Similarly in the present matter, the Petitioners failed to produce any cogent, reliable evidence of appointments in the Respondent Employment and also failed to prove that the fact that employee –employer relationship exists between the Petitioners and Respondent.

14. Further, Petitioners contended that in the event of transfer of the catering establishment to IRCTC, the Catering Helpers are entitled to absorption in the new catering establishment or in some other post in Respondent establishment with no less beneficial service condition or in the alternative nature and compensation as on retrenchment u/s 25N of the I.D. Act, 1947. In view of the discussion and finding in the fore gone paragraph, it is not established and proved that the Petitioners were employees of the Respondent Railways and no Employer –Employee relationship existed between Petitioners and Respondent. Hence, the Petitioners are not entitled to absorption in the newly created establishment i.e., IRCTC. Furthermore, IRCTC are not impleaded as a party in the petition, therefore, Petitioners can not claim any relief against IRCTC.

Thus, Point No.I is decided accordingly.

15. Point No.II: In view of the fore gone discussion in Point No.I, as it is clearly established that there is no employee-employer relationship existed between the Petitioners and the Respondent, and Petitioners are not entitled to any relief.

Thus, Point No.II is decided accordingly.

AWARD

In view of the finding at Points No.I and II, it is held that the industrial dispute raised by South Central Railway Catering Helpers and Workers Union against the Management of South Central Railway over alleged illegal removal

of Railway Catering Helpers is not justified. Hence, the workmen concerned are not entitled to any relief as prayed for.

Reference is answered accordingly.

Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of December, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri Gundu Raju

WW2: Sri Anwar Hussain

WW3: Sri Narmeta Bucheeru

WW4: Sri Shaik Sadiq Vali

WW5: Sri Solomon

WW6: Sri D. Subbaiah

Witnesses examined for the
Respondent

MW1: Sri K.V. Brahmaji Rao

MW2: Sri Srikant Mane

Documents marked for the Petitioner

Ex.W1: Photostat copy of complaint dt.13.2.2004 by the Petitioner to the RLC(C), Hyderabad

Ex.W2: Photostat copy of Petitioner's rejoinder to Respondent's remarks submitted to conciliation officer

Ex.W3: Photostat copy of final report by ALC(C) to Government of India No.8(C)/1/04-E3

Ex.W4 to W152: Photostat copies of Identity Cards/Authorization letters given to the Helper listed in the list of additional documents by the Respondent

Ex.W153: Photostat copy of identification certificate issued by Respondent dt.31.7.2002

Ex.W154: Photostat copy of letter of appointment as Vendor by the Respondent dt.8.10.1980

Ex.W155: Photostat copy of letter of appointment as vendor in the year 1973

Ex.W156: Photostat copy of letter of absorption into Respondent establishment dt. 24.2.2003

Ex.W157: Photostat copy of circular issued by Respondent dt.2.5.2003

Ex.W158: Photostat copy of service certificate issued by SC Railway

Ex.W159 to W163: Photostat copies of Identity Cards/Authorization letters given to the Helper listed in the list of additional documents by the Respondent

Ex.W164 to W169: Photostat copies of counter foils issued by Respondent to Petitioners

Ex.W170 to W213: Photostat copies of medical certificates issued by Sr. Medical Superintendent of Respondent Hospital, SC Rly

Documents marked for the Respondent

Ex.M1: Attested copy of letter dated 19.4.2001

Ex.M2: Attested copy of letter dated 19.11.2001

Ex.M3: Attested copy of letter dated 21.8.2002

Ex.M4: Attested copy of letter dated 21.9.2004

Ex.M5: Attested copy of letter dated 21.5.2004

Ex.M6: Attested copy of letter dated 4.11.2004

Ex.M7: Attested copy of letter dated 16.2.2005

Ex.M8: Attested copy of letter dated 23.6.2005

नई दिल्ली, 27 फरवरी, 2024

का.आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (100/2002) प्रकाशित करती है।

[सं. एल - 12012/87/2000- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 27th February, 2024

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 100/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12012/87/2000- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023

INDUSTRIAL DISPUTE No. 100/2002

(Old ID No.69/2000)

Between:

Sri G. Sai Prasad,

S/o LIG-250, APHB Colony,

Anantapur (A.P.).

... Petitioner

And

The Dy.General Manager,

State Bank of India,

Zonal Office, Renigunta Road,

Tirupathi.

.....Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/87/2000-IR(B.I) dated 14.7.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of India, Salakam Cheruvu Branch in terminating Shri G. Sai Prasad, Messenger, from the services of the Bank by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief he is entitled?”

After receipt of the reference, it was numbered as ID No.100/2002 (Old ID No.69/2000) and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

- “(1) affirming the impugned common order of the learned single Judge to the “extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;
- (2) The further findings and directions issued through the impugned common order are vacated;
- (3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,
- (4) the parties to make appearance before the Tribunal on the given date.”

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, “Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR, J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal/The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.”

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. The workman filed his claim statement with the averments in brief as follows:

The petitioner, Sri G. Sai Prasad was working as a Messenger in the State Bank of India from 1988 to 1993. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to SC community. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel “found suitable for permanent appointment ” by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after 1.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a

Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel be valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth, "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated 16.8.1990 stated in its counter affidavit as follows:

"Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management

so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from 1.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent

settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the candidates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subordinate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one time and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990. In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not bind the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give wide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployed, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period,

and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for

permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 9 documents which were marked as Ex.W1 to W9. Ex.W1 to W3 are service certificates. Ex.W4 is the application in response to the notification by the Petitioner, Ex.W5 is the call letter for interview, Ex.W6 is the panel list. Ex.W7 is the circular by the bank about absorption of temporary employees. Ex.W8 is notification of vacancies by the bank to the employment exchange. Ex.W9 is inspection and audit report dt. 14.7.99 issued to all branch managers. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

- I. Whether the action of the Respondent Management in terminating the services of the workman, Sri G. Sai Prasad, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?
- II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?
- III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II:-** The workman claims that he had been working with the Respondent Bank on 2.3.1988 for 8 days on temporary basis. In the year 1989, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1989 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1991, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the

vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W1 to W3 are the service certificates. In cross examination, WW1 states that, on the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was engaged as temporary attendar in 8 days at the said Branch from 2.3.1988. I did not work continuously. I was not sponsored by any employment exchange. I did not undergo the regular selection process before my engagement as a temporary attendar in the branch. I applied in response to an advertisement issued by the bank in the year 1989. As per settlements entered into between the bank and the union, I was called for interview and my name was included in the panel of temporary attendars in the year 1989. It is true that the panels were prepared basing on the no. of days of service put in by the temporary each attendar in the bank. It is true that some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel." Further, Petitioner states, "I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank." Further, the Petitioner states that, "I did not work for 240 days in any year in my entire service in any branch." On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that:**

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be

granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held:-**

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Ors. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case of **State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held:-**

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held :**

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri G. Sai Prasad, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri G. Sai Prasad, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri G. Sai Prasad

MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

- Ex.W1: Photocopy of Service certificate
- Ex.W2: Photocopy of Service certificate
- Ex.W3: Photocopy of Service certificate
- Ex.W4: Photocopy of application of Petitioner
- Ex.W5: Photocopy of Call letter for interview
- Ex.W6: Photocopy of panel list
- Ex.W7: Photocopy of Circular by the bank about absorption of temp. employees
- Ex.W8: Photocopy of notification of vacancies by the bank to employment exchange
- Ex.W9: Photocopy of inspection and audit report dt. 14.7.99

Documents marked for the Respondent

- Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
- Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
- Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
- Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
- Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
- Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
- Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
- Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
- Ex.M9: Photocopy of statement of 1989 Non0messenger panel
- Ex.M10: Photocopy of statement of 1992 panel
- Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
- Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 27 फरवरी, 2024

का.आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पंजाब नेशनल बैंक के प्रबंधक, संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (59/2022) प्रकाशित करती है।

[सं. एल - 39025/01/2024- आई आर (बी-II)-05]

सलोनी, उप निदेशक

New Delhi, the 27th February, 2024

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 59/2022) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of M/s Punjab National Bank and their workmen.

[No. L-39025/01/2024- IR(B-II)-05]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 10th day of October, 2023

INDUSTRIAL DISPUTE No. 59/2022

Between:

N. Renuka,

W/o Nimmangudi Ramanaiyah,

R/o7-9-46/1/2, Panagal Road,

Sri Ram Nagar Colony,

Nalgonda

.....Petitioner

AND

The Circle Head,

M/s Punjab National Bank,

Secunderabad, 103, 8-2-248A,

Maharishi House, Road No. 3,

Banjara Hills, Hyderabad-500034

... Respondent

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, M. Govind & Venkatesh Dixit, Advocates

For the Respondent: M/s.N.V.Subba Raju, V. V. Ramana & V. Ilender, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.7/3/2022-B1, dated 18.05.2022 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Punjab National Bank and their workman. The reference is,

SCHEDULE

“Whether the action of the Management of M/s. Punjab National Bank, Hyderabad (erstwhile Oriental Bank of Commerce), in removal of services of Smt. N. Renuka, ex-workman is legal, proper and justified or not? If not to what relief Smt N.Renuka, ex-workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 59/2022 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents since December 2022. Respondent present. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. In absence of Petitioner and claim statement, the case is dismissed for default and a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 10th day of October, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 फरवरी, 2024

का.आ. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (41/2007) प्रकाशित करती है।

[सं. एल - 120125/130/2007- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 27th February, 2024

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 41/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of HDFC Bank and their workmen.

[No. L-12012/130/2007- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**
Presiding Officer

Dated the 28th day of December, 2023

INDUSTRIAL DISPUTE No. 41/2007

Between:

Sri A. Tirumala Rao,
S/o Late A. Venkata Ratnam,
R/o H.No.41-15-20/5-5

Opp. Kalpana Printers, Krishna Lanka,

Vijayawada.

..... Petitioner

AND

1. The Head(HR)

HDFC Bank House, 2nd floor,

Senapathi Bapat Marg,

Lower Parel, Mumbai.

2. The Branch Manager,

HDFC Bank Limited,

M.G. Road, Labbipet,

Vijayawada.

.... Respondents

Appearances:

For the Petitioner : M/s. G. Vidyasagar, K. Udayasree, P. Sudheer Rao & D. Madhusudhan, Advocates

For the Respondent: Sri R. RaviKumar, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/130/2007-IR(B.I) dated 9.8.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of HDFC Bank Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the management of HDFC Bank Vijayawada in terminating the services of Shri A. Tirumala Rao, Ex-Executive 1A w.e.f. 24.12.2005 is justified? If not, to what relief the concerned workman is entitled?”

The reference is numbered in this Tribunal as I.D. No. 41/2007 and notices were issued to the parties concerned.

2. The averments made in the claim statement are as follows:

It is submitted that the Petitioner joined in service of the 2nd Respondent bank on 19.11.2003 as Executive-Retail Credit IA. His services were confirmed on 28.5.2004. The Petitioner is responsible for collection of two wheeler loans, car loans and personal loans and Business loans. The Petitioner was looking after the Vijayawada Branch which consists of Vijayawada, Guntur, Ongole, Nellore, Tirupathi, Rajahmundry and Visakhapatnam. Since from the date of appointment, the Petitioner is discharging his duties to the entire satisfaction of his superiors, without any remarks whatsoever. It is submitted that while the matter stood thus, the Respondents suspended the Petitioner vide order dated 15-11-2005 on the allegation that there are certain serious and grave lapses on part of the Petitioner while discharging his duties, but the suspension order does not disclose any of the alleged serious and grave lapses. No charge memo or Charge Sheet is issued against the Petitioner before issuing the suspension order. Even the suspension order does not provide any opportunity to the Petitioner explanation, nor the Respondents called for any explanation, therefore, the suspension order itself is vague. Thereafter, the Petitioner was issued with termination order dated 24.12.2005. The termination order discloses an Internal Investigation dated 25.10.2005, but no such report is furnished to the Petitioner and the allegations that the Petitioner misappropriated the sale of repossessed assets. The suspension order as well as the termination order does not disclose the details of the misappropriated amount and the details of repossessed assets, only a mere allegation is made against the Petitioner and terminated his services without conducting any sort of enquiry into the charges. In a catena of decisions the Apex Court of India was categorically held that, before issuing the major penalty a detailed enquiry is to be conducted. Hence, the termination order issued against the Petitioner is liable to be set aside, on the ground that no enquiry is conducted against the Petitioner before issuing the termination order. The termination order also discloses that the Petitioner has confessed on 10-11-2005 and accepted the allegation. The bank is absolutely false and incorrect that the Petitioner never issued any confession on 10-11-2005 and that the Petitioner never resigned for his services. All the allegations are false and incorrect and the Petitioner is denying these allegations in toto. The Petitioner made representation on 7-4-2006 to the Respondent, wherein he has stated that no opportunity was given to him to prove his innocence and no material was furnished to him in support of the allegations. He also stated that he was forced to resign under threat. Another such representation was also made to the Respondent on 22.5.2006, as there was no response from the Respondents, the Petitioner got issued a legal notice on 12.4.2006 through his Advocate for reinstatement as well as

requested the Respondents to freeze the account of the Petitioner. Thereafter, as there is no alternative the Petitioner made representation to the Assistant Commissioner of Labour (Central), Vijayawada on 16.6.06 to intervene into the matter and sought for a direction to the Respondents to reinstate him into service with all benefits. During the course of the conciliation proceedings, a Memo was filed by one Sri N.Ramesh, who was alleged to be the complainant against the Petitioner. It is the case of the bank/Respondent that the said N.Ramesh made a complaint against the Petitioner alleging the irregularities. The said N.Ramesh filed a Memo stating categorically that there are no irregular transactions or such transaction opposed to the Rules and Regulations of the Bank between him and the Petitioner. He also stated that he has not paid any amount to the Petitioner nor received any advantage from the Petitioner. He further stated that he has no grievance against the Petitioner. The Memo of N.Ramesh is a clinging evidence that there are no lapses on part of the Petitioner. After several joint meetings held before the Conciliation Officer, the matter finally came up for hearing on 23-7-2007. The Conciliation Officer vide his failure report dated 23-7-2007 held that no amicable settlement could be brought out and thus the Conciliation proceedings were ended in failure. Hence, this industrial dispute. The allegation that the Petitioner was performing managerial functions in the Bank which is false and incorrect, the Petitioner performed his duties as Workman, non-executive, non-supervisory and non-managerial and no discretion or option or decision making powers vested in him. It was also denied by the Petitioner the vehicles was repossessed by M/s. Malvika Financial Services, by its Managing Partner N.Ramesh. The Memo of N.Ramesh before the conciliation officer would clearly shows that there are no lapses on part of the Petitioner. The allegation that the Petitioner confessed the charge and executed a letter accordingly, the statement of the Petitioner was not voluntary, but by threat and force and the Petitioner has not tendered any resignation. It is submitted that no opportunity was granted to the Petitioner to defend his case, no Charge Sheet was issued. No evidence was led to prove the allegations made against the Petitioner. It is submitted that no enquiry is conducted before terminating the services of the Petitioner, as held by the Hon'ble Apex Court in various cases, without Conducting any enquiry no employee can be removed nor no major penalty will be issued. Even in a case reported in 2002 (92) FLR 4 (AP) before proceeding with departmental enquiry, he must be informed clearly and accurately the charges leveled against him. In the present case, even the basic Charge Sheet was also not issued. Therefore, the termination order is liable to be set aside on this ground. It is submitted that the Hon'ble Supreme Court in a Judgment reported in AIR 1984 SC 273 of 4 Judges bench held that neither cross-examination nor opportunity to lead evidence in the departmental enquiry is a violation of principles of natural justice. Therefore, before issuing a major penalty an enquiry is a must. The present matter is also stands on the same and similar footing. On this ground also the termination order is liable to be set aside. It is submitted that the Respondent cannot contend that they lost confidence on the Petitioner, without proving anything against the Petitioner. There is no substantial proof before the Respondents authorities to prove the case. Therefore, the bank cannot say that the Petitioner is not a confident employee. It is submitted that the Respondent has not adverted to any service rules providing for such exparte observations against the Petitioner authorizing the imposition of major penalty. It is submitted that ever since the termination order, the Petitioner is facing severe financial hardships. Because of his illegal termination not only the Petitioner is suffering, but his family members also suffering a lot. It is submitted that this Hon'ble Court is having wide powers under Section 11-A of Industrial Disputes Act to modify the order of punishment to a lesser punishment. It is therefore prayed that this Hon'ble Court may be pleased to declare the action of the Respondents imposing the punishment of termination from service vide order dated 24-12-2005 as illegal and arbitrary and consequently direct the Respondents to reinstate the Petitioner into service, with continuity of service, with full back wages and all other attendant benefits.

3. Respondent filed counter refuting the averments of the Petitioner as under:

Respondents submit that the petitioner being a management staff does not fall within the purview of the Industrial Disputes Act, 1947 and the subject reference suffers from the grave irregularity and infirmity. Prima facie this Hon'ble Tribunal has no jurisdiction to entertain this case of the petitioner Since he not being a workman as defined under ID Act and thus this is not a proper forum for adjudication of this dispute. It is, therefore, submitted that this petitions is liable to be dismissed in limine on this ground alone. The Respondents submit that the reference as framed is incorrect on the basis of the facts and circumstances presented by the respective parties in this regard and consequently it is submitted that the reference ab initio is bad in Law. The Respondent submits that the Claimant was appointed as an Executive in Retail Credit by issuance of a letter on 19.11.2003 and an Agreement of employment was also executed by the Claimant with the Respondent Bank on 28.05.2004 after undergoing probation for a period of 6 months from the date of employment. The Respondent submits that the agreement entered into clearly states that the Claimant who was employed in the employment of the Respondent as Executive and after completion of the period of probation the Respondent Bank decided to continue the employment of the employee on the terms and conditions which were set out in the Agreement. The Respondent submits that the Petitioner was working as a Manager-collection at the relevant time and was in-charge of monitoring collections towards loan account pertaining to two wheelers and four wheelers financed by the Bank/Branch and was involved in repossession of the vehicle of the defaulting customers and selling the same as per the rules and norms concerning such loan for realizing the dues. The Respondent submits that the Petitioner was an officer of the Bank at the relevant time performing the managerial functions as per the terms of appointment. The Respondent submits that during the performance of his managerial function and as a part of his duty, the Petitioner repossessed a two wheeler viz. a Bajaj

pulsar from Mr.Ikram Khan, a customer of the Bank who failed to pay the EMI and thus defaulted which amounted to Rs.14,938/-. The Respondent submits that in the Bank there is a Rule not to sell a repossessed vehicle as explained above to the Agencies engaged by the Bank and/or to the personnel connected with the Agency. The Petitioner allegedly sold the vehicle repossessed to one Mr.N.Ramesh, a Managing partner of collection agency functioning in the name and style of Malvika Marketing and Financial services' engaged by the Respondent Bank. The Respondent submits that when the Petitioner was, confronted by the bank officials in presence of the customer of the Bank, Mr.Ikram Khan and Mr.N.Ramesh, the Managing Partner of M/s.Malvika Marketing Financial Services, it came to light that he had fabricated documents with tailor made dates to release the vehicle from the yard allegedly forging the signature of Mr.Ikram Khan. This Respondent submits that copy of such documents were also recovered from the residence of the Petitioner and further it was found that the documents were prepared to show as if the vehicle was to be delivered to one Mr.Abdul Kareem, the fictitious person authorized by Mr.Ikram Khan. The Respondent further submits that the Petitioner besides selling the said vehicle to one Mr.Ramesh as mentioned above also indulged in allowing the agencies to take possession of two other vehicles and admittedly advised the agency to bill the Respondent Bank with an amount of Rs.12,500/- towards repossession charges and it was also revealed that he had demanded Rs.10,000/- out of Rs.12,500/- so billed from the Agency. Admittedly, it is revealed that the Petitioner had taken Rs.7,500/- from the Agency besides collecting Rs.3,000/ from Mr.Ramesh knowing fully well that his acts are unauthorized and contrary to the rules and regulations of the Bank. The Petitioner on being exposed in the above manner, voluntarily and without pressure of any nature admitted and confessed the above facts by his letter dated 10.11.2005 and by the same letter tendered his resignation and further stated that he is indemnifying the Bank towards all his misdeeds if at all proved during his tenure as Executive of the Vijayawada branch. Respondent submits that the Petitioner had further qualified the above statement by stating that the above said letter of confession and resignation was with his own consent with no hidden facts. This letter was also witnessed by three executives who were deployed in that branch at that particular time. In response to this letter of unqualified admission, the Petitioner was served with a suspension order dated 15.11.2005 and by a letter dated 24.12.2005 on the basis of the letter of admission of the Petitioner dated 10.11.2005 and on the basis of loss of confidence, the services of Mr. Thirumala Rao was terminated. This is the order which was impugned before the Assistant Labour Commissioner, Vijayawada. The letter of confession dated 10.11.2005, the letter of suspension dated 15.11.2005 and the letter of termination dated 24.12.2005 are enclosed herewith as Annexure A, B and C to this reply. This Respondent submits that in the industrial disputes raised before the Assistant Labour Commissioner (Central) at Vijayawada, the Respondent Bank made its submissions on 04.10.2006. It is incorrect on the part of the Petitioner to state that he has been performing his duty to the entire satisfaction of his superiors, which if were to be true would not have resulted in his separation in the fashion it has happened. The Petitioner was suspended after submission of his letter of confession dated 10.11.2005 wherein he had admitted his misconduct. It is submitted that the confession was an unqualified one which clearly states that it was made in his free will and without compulsion. Where an officer staff admits misconduct in an unqualified manner nothing further requires to be done. Be that as it may, an enquiry is required to be conducted to find out the existence of truth in respect of allegation prima facie. When a delinquent officer employee admits in to and confesses to the commission of misconduct nothing remains. Further, the Petitioner will not fall under definition of "workmen" under section 2(s) of the D act, 1947. It is on record that the employee was appointed in the management cadre in Retail Credit with effect from 28.11.2003 on a monthly salary of Rs.6,480/- p.m. with additional benefits. It is also on record that the Petitioner being in management cadre was an executive involved in performance of managerial functions and consequently the Hon'ble Assistant Labour Commissioner ought not to have entertained the dispute as the Petitioner is not a workmen and, therefore, it is clear that cognizance of the dispute has been taken by the Hon'ble Assistant Labour Commissioner (C) has jurisdiction and thus the current reference is bad in law as the same is being without jurisdiction.

Sec 2(s) reads as follows:

“ ‘workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or Hon'ble Supreme Court of India supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with. Or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) or, (ii) or, (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

It is clear from the above that a person employed mainly in managerial or administrative capacity as in our case the Petitioner being employed as Executive - Retail Credit, will not be regarded as workman as laid down in Sub Clause (i). Further, when an employee is working in a supervisory capacity drawing wages exceeding Rs. 1600/- per

mensum cannot be considered as a workman there is no doubt that the Petitioner is also not a workman since he is drawing Rs.6,480/- per mensum as salary. The Sub Clause reads further that even when the nature of the job is that of a Managerial one then such an employee cannot fall under the definition of a workman. The Petitioner's nature of work and functionalities was that of an executive and the Petitioner was in-charge of recovery of dues from the customer and had the liberty to plan his task and execute the same. The Petitioner was entrusted with the task of collecting the dues to the bank through legal process and was also in-charge of supervising and monitoring the activities of people who were serving his cause. It is to be noted that the Petitioner's service was separated in view of the Commission of financial irregularities which was in accordance with the terms of his employment. The Petitioner occupied a position of command and is authorized to act in certain matters within the limits of his authorities. His principal duty was to organize and plan for the recovery of dues to the bank and he could perform this in his own capacity but not violating the terms and conditions laid down in the Appointment letter. It is relevant to state that it is not necessary that the employee should be higher in hierarchy or have absolute powers in all respects in order to execute managerial powers. In fact, the Sub Clause in Sec 2(s) speaks of a person employed mainly in managerial or administrative capacity and is silent about what position they have to be in the management. Managerial position can be attained inside the department as per *British Paints India Ltd, Vs, 5th Industrial Tribunal, 1980, Labour and Industrial cases at Pg.274(Cal)*. Therefore it is submitted that the Petitioner is not a workman and is outside the purview of the Industrial Disputes Act, 1947. The submissions made by the Petitioner claiming rights of a workman under the ID Act, 1947, is an ill conceived one as he is not a workman. The submissions made by the Petitioner are contrary to his letter dated 10.11.2005. In the Claim Statement the Petitioner has raised that his representations dated 07.04.2006 and 22.05.2005 after more than 5-6 months of the termination of service were not considered to prove his innocence. Also the Petitioner states that he was forced to resign under threat. This is contrary to the letter dated 10.11.2005 where the Petitioner had himself given in writing that the resignation was on his violation. It is denied that the Petitioner was discharging his duties to the entire satisfaction of his superiors without any remarks. As regard submissions made in Para 3-6 of the Grounds of the Claim Statement is denied. It is stated that Respondents have not issued him a charge sheet or that no charge memo before issuing the suspension order dated 15.11.2005 was issued. It is submitted that pending the disciplinary proceedings against the Petitioner the suspension order was issued illustrating the reason that the Petitioner has committed certain serious and grave lapses while discharging his duties. The Petitioner was well aware of his acts of dishonesty and misconduct which were prejudicial to the interests of the Bank. The Bank was of the opinion to suspend the Petitioner immediately and not have him in the Bank premises for he might jeopardize the interests of the Bank. It is submitted that suspension is not a penalty. It debar the employee from exercising the powers and discharging the duties of his office for the period the order of suspension remains in force. Therefore the ground that a charge sheet is to be issued before a suspension order is not a correct legal position. In the Claim Statement it is stated that the Respondent had terminated the services of the Petitioner without conducting any sort of enquiry into the charges alleged whatsoever right from the date of appointment. It is not denied that a formal enquiry is mandatory to decide termination of service of an employee when there is need to prove a charge. But in the case at hand when the Petitioner vide letter dated 10.11.2005 has himself decided to tender his resignation and accept his misdeeds during his tenure there is no need for an enquiry. Further the Petitioner is estopped from raising such a plea. The ground that a charge sheet is to be issued before a suspension order is an incorrect legal position. In the Claim Statement the Petitioner states that a memo was filed by Mr.Ramesh that the transactions between him and the Petitioner does not violate the Rules and Regulations of the Bank. He has also stated that he has neither received any amount from the Petitioner nor received any advance. It is submitted that in the letter dated 10.11.2005 the Petitioner has accused the same Mr.Ramesh of forging the release letter of the vehicle but now takes shelter by the memo filed by Mr.Ramesh which now establishes a foul play. It is submitted that the Petitioner has not only unjustly enriched himself through Mr. Ramesh but also through one Mr.VenkateshwaraRao - Maruthi Zen and another Mr.Ramakrishnan Toyota Qualis. The Respondent reserves his right to initiate proceedings against the Petitioner with regard to this. The Respondent is governed by the Rules and Regulations of the Bank and he cannot himself being himself under the definition of workmen in view of the office employee by the nature of duties he was performing as well as his salary levels. The Petitioner will have to bend himself for his present predicament. It is submitted that the Petitioner not being a workman cannot invite application of the provision of Sec.11A of the Industrial Disputes Act, 1947. It may be construed that the Petitioner in no way denies his liability towards the bank. Therefore it is submitted that the present Claim Statement is liable to be dismissed for absence of jurisdiction as the Petitioner does not come under the purview of the "Workman" as mentioned in Sec.2(s) of the Industrial Disputes Act, 1947. It is prayed to dismiss the claim petition.

4. The Petitioner has examined WW1 and WW2 to prove and corroborate the averments of his petition and also filed documentary evidence i.e., Ex.W1 to W8. On the other hand, Respondent has examined witness MW1 and also filed documents Ex.M1 to M8.

5. Both parties have filed written submissions. Heard the arguments of Learned Counsel for both the parties.

6. From the perusal of the rival pleadings of both the parties, following issues are to be determined:-

I. Whether the action of the Management of HDFC Bank, Vijayawada in terminating the service of Sri A. Tirumala Rao, Ex. Executive IA w.e.f. 24.12.2005 is justified?

II. Whether the Petitioner appointed as Executive-Retail Credit IA is workman as defined under Sec.2(s) of the I.D. Act, 1947?

III. To what relief the Petitioner is entitled for?

FINDINGS:-

7. **Point No.I:** The Learned Counsel for the Petitioner submitted that the Petitioner joined the service of the 2nd Respondent bank on 19.11.2003 as Executive-Retail Credit IA and his services were confirmed on 28.5.2004. The Petitioner was responsible for collection of two wheeler loans, car loans and personal loans and Business loans. The Petitioner was looking after the Vijayawada Branch which consists of Vijayawada, Guntur, Ongole, Nellore, Tirupathi, Rajahmundry and Visakhapatnam and since from the date of appointment, the Petitioner is discharging his duties to the entire satisfaction of his superiors, without any remarks whatsoever. Further, Petitioner counsel submits that while the matter stood thus, the Respondents suspended the Petitioner vide order dated 15-11-2005 on the allegation that there are certain serious and grave lapses on part of the Petitioner while discharging his duties, but the suspension order does not disclose any of the alleged serious and grave lapses. No charge memo or Charge Sheet was issued against the Petitioner before issuing the suspension order. Further, it is submitted that thereafter, the Petitioner was issued with termination order dated 24.12.2005. The termination order discloses an Internal Investigation dated 25.10.2005, but no such report has been furnished to the Petitioner and the allegations that the Petitioner misappropriated the sale of repossessed assets. The suspension order as well as the termination order does not disclose the details of the misappropriated amount and the details of repossessed assets, only a mere allegation is made against the Petitioner and terminated his services without conducting any sort of enquiry into the charges. Whereas in a catena of decisions the Apex Court of India was categorically held that, before issuing the major penalty a detailed enquiry is to be conducted. The termination order has the ground that no enquiry is conducted against the Petitioner before issuing the termination order.

8. The impugned termination order dated 24.12.2005 has been challenged by the Petitioner on the ground that no hearing opportunity was granted to the Petitioner to defend his case and no charge sheet was issued and no evidence was lead and proved the allegation made against the Petitioner. Whereas in catena of decisions the Hon'ble Apex Court have held that, it is mandatory to conduct enquiry before terminating the services of an employee and before proceeding with the domestic enquiry the employee must be informed clearly about the charges levelled against him. But the record of the matter at hand reveals that even the basic charge sheet was not issued to the Petitioner before issuing termination order. Therefore, the Petitioner submits that the termination order dated 24.12.2005 is liable to be set aside on this ground alone.

9. On the hand, Respondent contended that the Petitioner was working as a Manager-collection at the relevant time and he was In-charge of monitoring collections towards loan account pertaining to two wheelers and four wheelers financed by the Bank/Branch and was involved in repossession of the vehicle of the defaulting customers and selling the same as per the rules and norms concerning such loan for realizing the dues. Further, the Respondent contended that during the performance of his managerial function and as a part of his duty, the Petitioner repossessed a two wheeler viz. a bajaj pulsar from Mr.Ikram Khan, a customer of the Bank who failed to pay the EMI and thus defaulted which amounted to Rs.14,938/-. There is a Rule in the bank not to sell a repossessed vehicle as explained above to the Agencies engaged by the Bank and/or to the personnel connected with the Agency. The Petitioner allegedly sold the vehicle repossessed to one Mr.N.Ramesh, a Managing partner of collection agency functioning in the name and style of Malvika Marketing and Financial services' engaged by the Respondent Bank. Further, Respondent contended that the Petitioner besides selling the said vehicle to one Mr.Ramesh as mentioned above also indulged in allowing the agencies to take possession of two other vehicles and admittedly advised the agency to bill the Respondent Bank with an amount of Rs.12,500/- towards repossession charges and it was also revealed that he had demanded Rs.10,000/- out of Rs.12,500/- so billed from the Agency. Admittedly, it is revealed that the Petitioner had taken Rs.7,500/- from the Agency besides collecting Rs.3,000/ from Mr.Ramesh knowing fully well that his acts are unauthorized and contrary to the rules and regulations of the Bank. The Petitioner on being exposed in the above manner, voluntarily and without pressure of any nature admitted and confessed the above facts by his letter dated 10.11.2005 and by the same letter tendered his resignation and further stated that he is indemnifying the Bank towards all his misdeeds if at all proved during his tenure as Executive of the Vijayawada branch. Petitioner had further qualified the above statement by stating that the above said letter of confession and resignation was with his own consent with no hidden facts. This letter was also witnessed by three executives who were deployed in that branch at that particular time. In response to this letter of unqualified admission, the Petitioner was served with a suspension order dated 15.11.2005 and by a letter dated 24.12.2005 on the basis of the letter of admission of the Petitioner dated 10.11.2005 and on the basis of loss of confidence, the services of Mr. Tirumala Rao was terminated. Therefore, Respondent contended that Petitioner's claim statement is liable to be dismissed.

10. Admittedly, before issuing the termination letter dated 24.12.2005 to Petitioner, the Respondent did not conduct any enquiry against the delinquent workman and no charge sheet or notice was served upon him. Thus, Petitioner was not given fair opportunity of hearing before issuing termination letter. The said termination letter dated 24.12.2005, Ex.M6 discloses that the Respondent Management has passed the termination order of the

Petitioner merely on the ground that he has confessed his alleged misconduct in his resignation letter dated 10.11.2005 and in the same order, his prayer for resignation from the service of the bank as mentioned in his letter was declined. The said termination letter does not disclose the nature of alleged misconduct or particulars/details of the misconduct alleged to have been committed by the Petitioner workman and Respondent has imposed major penalty of dismissal of Petitioner from service even without issuing show cause notice before infliction of major penalty. It is admitted fact that Petitioner was the employee of the Respondent bank and he has been confirmed vide order dated 28.5.2004. But before imposing the punishment of dismissal from service the Respondent Management did not issue any notice or charge sheet and no Departmental enquiry conducted. Thus, the Respondent Management failed to comply the mandatory provisions of principles of natural justice.

11. In this context the reference of the decision of the Hon'ble Apex Court in the case of **D K Yadav vs. J M A Industries Ltd., on 7.5.1993 SCC page 259** is relevant. The facts of the said case are that the Respondent respondent-company terminated the appellant's services on the ground that since he had willingly absented from duty continuously for more than 5 days from December 3, 1980, without leave or prior information of intimation or previous permission of the management, he had been deemed to have left the service of the company on his own and lost the lien and the appointment with effect from December 3, 1980. It relied on clause 13(2) (iv) of the Certified Standing Order for passing termination order and in this case no Departmental enquiry was conducted against employee by the Respondent Company before terminating the services of the employee. The Hon'ble Apex Court have held:-

“para (6): The principle question is whether the impugned action is violative of principles of natural justice. In A.K. Kriepak and Ors. v. Union of India & Ors., [1969] 2 SCC 262 a Constitution bench of this court held that the distinction between quasi judicial and administrative order has gradually become thin. Now it is totally clipped and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India & Anr. [1971] 1 SCR 791. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice necessary implication from specific provisions in the Act like Ss.25F; 25FF; 25FFF; etc, the need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service are completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of s. 25F resort could be had to retrench the employees in conformity therewith particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary. Unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs.”

In view of the Law laid down by the Hon'ble Apex Court in the above case the principles of natural justice can not be violated in any circumstances be in the case of certified Standing Order provision of Clause of Agreement to Employment.

12. Admittedly, in the present matter, Petitioner's termination from the services vide order dated 24.12.2005 has been done by Respondent without conducting Departmental enquiry Respondent has not issued any show cause notice /charge sheet before passing the impugned termination order of the Petitioner. As the workman has been terminated by the employer without conducting any Departmental enquiry without issuing charge sheet or show cause notice Petitioner's right of opportunity of hearing has been violated as enshrined under the principles of natural justice.

Three Judges Bench of the Hon'ble Supreme Court of India in the case of **State of Uttarakhand Vs. Sureshwati Civil Appeal No.142/2021 through judgement dated 20.1.2021 have held:-**

"14. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

A four Judge Bench of this Court in Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory¹ held that :

" 11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. v. Workmen²) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified."

Subsequently in Delhi Cloth and General Mills Co. v. Ludh Budh Singh this Court held that :

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."

In view of the law laid down by the Hon'ble Apex Court as discussed above, the action of the Respondent in terminating the service of Petitioner without conducting Departmental enquiry is in gross violation of settled Principle of law, since Respondent has passed the impugned termination order of Petitioner without conducting Departmental enquiry.

13. The Respondent employer has been accorded the reasonable opportunity to adduce the evidence to justify its' decision of termination of the services of the Petitioner by issuing termination order. Respondent examined MW1 and also filed the photocopies of documentary evidence i.e., Ex.M1 application for employment, Ex.M2 appointment letter, Ex.M3 is an Agreement of Employment, Ex.M4 letter of Petitioner for Resignation, Ex.M5 suspension letter, Ex.M6 termination letter, Ex.M7 submission of Respondent before ALC(C) and Ex.M8 is copy of conciliation proceedings. In reply Petitioner has examined himself as WW1 and witness WW2. Further, Petitioner has also filed photocopies of documents Ex.W1 to Ex.W8. Ex.W1 is the appointment order, Ex.W2 is Suspension order, Ex.W3 is Termination order, Ex.W4 and W5 are representations, Ex.W6 legal notice, Ex.W7 representation and Ex.W8 is the memo filed by Sri N. Ramesh.

14. Now, we proceed to examine the evidence adduced by the parties on record. Respondent witness MW1 in his chief affidavit has stated that the Petitioner was an officer of the bank at the relevant time performing the managerial functions as per the terms of the appointment and during the performance of his managerial function and as a part of his duty, the Petitioner repossessed a two wheeler viz. a Bajaj Pulsar from Mr. Ikram Khan, who failed to pay the EMI and thus defaulted with amount. Further, the witness MW1 states that in the bank there is a rule not to sell a repossessed vehicle to the agencies engaged by the bank or to their personnel connected with the Agency. The Petitioner allegedly sold the vehicle so repossessed to one Mr. N. Ramesh, a Managing Partner of the collection Agency functioning services and engaged by the Respondent bank. Besides selling the said vehicle to one Mr. Ramesh, Petitioner also indulged in allowing the agencies to take possession of vehicles and admitted advised the agency to bill the Respondent bank with an amount of Rs.12,500/- towards re-possession charges and it was also revealed that he had demanded Rs.10000/- out of Rs. 12,500/- so billed from the Agency. Admittedly it was revealed that Petitioner had taken Rs.7500/- from the agency besides collecting Rs.3000/- from Mr. Ramesh knowing fully well that his acts are unauthorized and contrary to the rules and regulations of the bank. When the Petitioner was confronted by the bank officials in the presence of the customers of the bank, Mr. Ikram Khan and Mr. N. Ramesh, the Managing Partner of M/s. Malvika Marketing Financial Services, it came to light that he had fabricated documents with tailor made dates to release the vehicle from the yard allegedly forging the signature of Mr. Ikram Khan. Witness further states that copy of said documents were also recovered from the residence and further it was

found that the documents were prepared to show as if the vehicle was to be delivered to one Mr. Abdul Kareem, the fictitious person authorized by Mr. Ikram Khan. Witness also states that on being exposed in the above manner, voluntarily and without any pressure of any nature admitted and confessed the above facts by his letter dated 10.11.2005, and by the same letter Petitioner tendered his resignation and further stated that he is indemnifying the bank towards all his misdeeds if at all proved during his tenure as Executive of the Vijayawada branch. Witness further states that Petitioner had further qualified his admission and confession by stating that the above said letter of confession and resignation was with his own consent with no hidden facts. This letter was also witnessed by three executives who were deployed in that branch at that particular time. In response to this letter of unqualified admission, the Petitioner was served with a suspension order dated 15.11.2005 and by a letter dated 24.12.2005 on the basis of admission of the Petitioner dated 10.11.2005 and on the basis of loss of confidence, the services of Sri Tirumala Rao was terminated. The MW1 further states that Petitioner was suspended after submission of his letter of confession dated 10.11.2005 wherein he had admitted his misconduct.

15. This witness was cross examined by the Petitioner. In his cross examination MW1 states, *"I do not remember the date of suspension of the workmen. But initially he was placed under suspension. After a month of suspension of the workmen he was terminated from the service. There is no reference of charges in the suspension orders, no specific allegation is mentioned in the suspension orders. Apart from the suspension order no specific charge sheet has been issued on the workman. Basing on the confessional statement of the Petitioner/workman he has been terminated from the service."* Further witness states that, *"In Ex.W4 Petitioner has mentioned that he was humiliated and forced to tender resignation under threats. No domestic enquiry has been conducted before issuance of termination order. It is a fact that the vendor had made a statement before the conciliation officer that he has not made any statement, but such statement of the vendor is after thought. Further witness states that Management has not filed any documents in this case to show that the workman has misappropriated the amount as mentioned by him in his statement. The witness volunteers that the workman has confessed about such misappropriation of amount and those are the personal documents of the Respondents. It is not correct to suggest that workman was forced to make confessional statement under threat regarding the misappropriation of money."* Thus, from the above statement of MW1 it is established that the termination order has been passed solely basing upon the confessional statement made by him in his resignation letter dated 10.11.2005. MW1 also states that documents i.e., receipts etc., were recovered from the residence of the Petitioner but no such document has been filed and proved evidence. Thus, the Respondent has not filed and proved any document to prove and establish the alleged misconduct of the Petitioner. In the wants of documentary evidence the statement of MW1 can be admitted to prove the charge of misconduct against Petitioner.

16. The perusal of the alleged resignation letter dated 10.11.2005 of the Petitioner reveals that Petitioner has not made unconditional and unqualified statement. The termination order of the Petitioner can not be issued merely basing upon the confessional statement made in the said letter. The Petitioner in the said letter has prayed for resignation from service under the circumstances mentioned therein. The Resignation letter, Ex.M4, further goes to reveal that it was addressed to Mr. M.R. Ananthamurthy, ACM., HDFC Bank, Ltd., Vijayawada and wherein the Petitioner has narrated facts and circumstances of the alleged transaction of sale and persons concerned. In the last para of his resignation letter he has mentioned, as extracted:- *"Basing the facts mentioned above, herewith I am tendering my resignation and indemnify this bank if at all any misdeeds proved during my tenure as Executive of Vijayawada branch."* Therefore, from the statement of Petitioner in the said resignation letter it can not be termed as unqualified admission of Petitioner and basing upon the said statement the Petitioner can not be terminated from service unless charge sheet has been served and delinquent has been provided fair opportunity of hearing and defence. The Petitioner tendered his resignation subject to condition that if his misdeeds proved during his tenure. In such circumstances, it was incumbent upon the Respondent employer to prove the misconduct of Petitioner by issuing a notice charge sheet to him with a specific allegation of misconduct against him. But no such notice/ charge sheet was issued explaining him about the allegation. Further, it reveals that at the foot of the resignation letter Ex.M4, witnesses N. Ramachandran and M.R. Ananth Murthy have put their signature. At least these two witnesses should have been examined by the Respondent to prove the fact that the resignation letter was tendered voluntarily. But, no such evidence has been produced by the Respondent. Furthermore, the other documents filed by the Petitioner, application for employment Ex.W1, suspension order Ex.W2, termination order Ex.W3, representations Ex.W4, W5 and W7, legal notice Ex.W6 and memo filed by Mr. N. Ramesh Ex.W8. These documents does not prove misconduct of the Petitioner. Ex.W3 is termination order and it contains as extracted below:-

"An internal investigation dated 25th October, 2005 on the alleged misappropriation of sale of repossessed assets has clearly established the following grave lapses committed by you in the discharge of your duties:

1. *Non adherence to collection process with respect to sale of repossessed assets.*
2. *Gross violation and improper of agency management with."*

The termination letter reveals that Respondent has also conducted an internal investigation dated 25.10.2005 in the matter of alleged misappropriation of sale of repossessed assets, and alleged grave lapses stated to have been

committed by the Petitioner. But no such documents pertaining to internal investigation dated 25.10.2005 has been filed and proved by Respondent employer to prove allegation of alleged misappropriation against the Petitioner.

17. As the Respondent has declined the prayer of resignation from the service made by the Petitioner under the circumstances and grounds taken in the resignation letter for resignation can not be made basis of his termination from service by the Respondent. Petitioner has statutory right to fair opportunity of hearing and defence in his dismissal from service. As no evidence has been lead and proved by the Respondent regarding alleged internal investigation dated 25.10.2005 the charge of misappropriation against the Petitioner, can not be said proved. In such circumstances, the termination order dated 24.12.2005 of the Petitioner from service is held not legal and justified.

18. Whereas on the other hand Petitioner has examined himself as WW1, wherein he has proved the documents application for employment Ex.W1, suspension order Ex.W2, termination order Ex.W3, representations Ex.W4, W5 and W7, legal notice Ex.W6 and memo filed by Mr. N. Ramesh Ex.W8. In his chief examination affidavit WW1 has corroborated the averment of his petition. WW2 states that, "the applicant nor received any advantage from the applicant-workman." This witness WW2 has been cross examined by the Respondent counsel but nothing has been elicited to discredit or disbelieve the testimony of the witnesses. In view of the law laid down by the Hon'ble Apex Court, it is the prime duty of the employer to give reasonable opportunity to be heard to the employee and it is implied from the nature of functions to be performed by the authority which has the power to take punitive or damaging action. This is the settled principle of natural justice that no man should be condemned without being heard, so as to prevent the authority to act arbitrarily affecting the rights of the concerned person. But, in the matter at hand, Respondent has terminated the services of the Petitioner without giving any reasonable opportunity to be heard and even without conducting enquiry and the impugned termination order under challenge has been issued by Respondent merely on the basis of admission in his Resignation letter dated 10.11.2005. That is in gross violation of principles of natural justice.

19. Further, the Respondent counsel contended that as per agreement letter dated 19.11.2003, there were terms and conditions in Clause 12 contains that the Managing Director of the bank and or his/her deputy nominated by him/her shall in his/her sole discretion be entitled to forth with terminate the employment of the Employee without any notice or otherwise in the case of. But merely on the basis of terms and conditions contained in Employment Agreement Petitioner can not be deprived of his statutory rights of reasonable opportunity of hearing / defence in the matter of major penalty against him. It is implied in the administrative/executive functions performed by the Respondent Management that any terms and conditions in employment can not be binding on employee which are against the law of principles of natural justice. Therefore, the contention of the Respondent Management that the services of the Petitioner was terminated in view of the agreement of employment which has been signed by the Petitioner is not tenable.

20. Therefore, in view of the fore gone discussion, I am of the view that the termination order dated 24.12.2005, Ex.M6 issued by the Respondent Management is in gross violation of the settled principles of natural justice and against the Law and it is unsustainable in the eye of law. Hence, action of the Respondent in issuing termination letter of Petitioner from service is not justified.

Therefore, Point No.I is answered accordingly.

21. Point No.II:- The Respondent in his counter has contended that Petitioner being a Managerial staff does not fall within the purview of the I.D. Act, 1947 and the subject reference suffers from the grave irregularity and infirmity. Further, he contended that the Tribunal has no jurisdiction to entertain this case of the Petitioner since the Petitioner is not a workman as defined under I.D. Act, 1947 and on this very ground the claim statement of the Petitioner is liable to be dismissed in limine. It is further contended that Sec.2(s) of the I.D. Act, 1947, that the Petitioner was appointed in the Managerial cadre vide letter dated 19.11.2003, on a monthly salary of Rs.6000/- with the additional benefits. Petitioner being in managerial cadre was an executive involved in the functions of the Management concerned and secondly, the ALC(C) ought not to have entertained the dispute as the Petitioner is not a workman. The Petitioner is not a workman and functionary Manager and involved in recoveries of dues of clients and to complete his tasks and execute the same. Petitioner was entrusted with the task of collecting dues to the bank through legal process and was also Incharge of processing and managerial activities of Department. Therefore, on the aforesaid ground, Petitioner is not workman as defined under I.D. Act, 1947.

22. On the other hand, Petitioner submitted that he was not performing managerial functions in the bank and the allegation of the Respondent that the Petitioner is performing managerial function in the bank is false and incorrect. The Petitioner is performing his duties of non-managerial and no discretion or option or decision making powers are vested in him. Therefore, he is coming under the definition of workman and claim petition filed by him is maintainable in the Tribunal.

23. Before examining the evidence adduced by the parties in this context it would be apposite to read the definition of workman as given u/s 2(s) of the I.D. Act, 1947 which is being extracted as below:-

Section 2(s) of the I.D. Act, 1947:-**Sec 2(s) reads as follows:**

“ ‘workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or Hon’ble Supreme Court of India supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with. Or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

In the case of Smt. **Sunita B. Vatsraj Vs. Karanataka Bank Ltd. & Another 1999(4)(BomCR 209)**, Hon’ble High Court of Bombay while dealing controversy between the parties regarding maintainability of the petition as a workman under I.D. Act, 1947 have held,

“22. From the various decisions, which have been cited on both the sides, and it being the Bank matter, in most of its decisions, we find reference to the Sastri and Desai Award and here we refer to the same as Sastri Award only. On behalf of the petitioner, a decision in the case of All India Reserve Bank Employees Association and another v. Reserve Bank of India and another, has been cited. The Apex Court was dealing with the matter of reference under section 10(1)(d) of the Industrial Disputes Act, 1947 as also the definition of workman under section 2(s) thereof and has held that whether a particular workman is a supervisor within or without the definition of workman is ultimately a question of fact, at best, one of mixed fact and law. The question will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factors. In the case before the Apex Court, it was observed that the work in a Bank involves layer upon layer of checkers and checking is hardly supervision where, however, there is a power of assigning duties and distribution of work there is supervision. In reply, the other side has referred to para 26 of the judgment, wherein it is observed that a Bank has placed on record extracts from manuals, orders, etc. relative to all Class II employees and after closed look into the duties as assigned to them, it was opined that they are of supervisory character. On fact, it was held that these employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical. Needless to say, this material is not there on record so far as the petitioner herein is concerned

23. In the next judgment, in the case of Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay, the Apex Court again held that the primary and basic duties should constitute the criterion and not incidental duties. At paragraph 10 at page 988, we look for that purpose. In that judgment, the workman was found to be a member of a group of three and may be a leader thereof, and he was to make indent for supply of printed stationery, to write a letter and also to take care that the work assigned to him should be completed in time. Substantially, his work remained to be the same as that of the other group members and, therefore, the Supreme Court categorically held that it cannot be said to be engaged in a supervisory capacity.

24. In a decision in the case of South Indian Bank Ltd. v. A.R. Chacko, , the Supreme Court has again held that the nomenclature of accountant by itself is not enough. The Labour Court in that case, as noted in paragraphs 11 and 12, said that there are Accountants who are really Officers and Accountants were merely senior clerks with supervisory duties and hence, with regard to the admissibility of the supervisory allowance to the workman, the Supreme Court has, for that purpose agreeing with this finding of the Labour Court, held that if at all the workman was to be treated as an officer on facts, so far as the petitioner Bank before the Supreme Court is concerned, the workman concerned would financially be the loser. Their Lordships were constrained to observe that this seems to be the way to take workman out of the purview of Sastri Award merely on the ground of promotion. In other words, if substantial duty is that of a workman and not of a supervisory nature, the person should continue to be as a workman whether he has given Power of Attorney or not, as he was not an Accountant or Supervisor.”

Therefore, in view of the definition of workman in I.D. Act, 1947, and the Law laid down by Hon’ble Apex Court as discussed above, I proceed to examine the evidence adduced by both the parties. The Petitioner has submitted appointment letter Ex.W1 reveals that the Petitioner is appointed in the Respondent bank as an Executive –Retail Credit, on the terms and conditions mentioned therein and in the appointment letter there is a clause of job description which reads as follow:-

“Job description:-

Your duties and responsibilities will be explained to you on your joining the bank. However, you shall execute and perform all such duties that may be assigned to you by the Bank from time to time and the Bank reserves its right to change these at its discretion.”

Thus, appointment letter does not contain details of functions and duties to be discharged by the employee appointed on the post of Executive-Retail Credit. It does not prove that he was appointed as Manager in the Bank. Further, the Agreement of employment has been filed wherein in the Clause 2 and 3 it is mentioned as extracted below:-

“2. The employee shall execute and perform all such duties as the employee maybe required by the Bank to perform at any office of the Bank or its subsidiary or associate Company/ies which may be established in India or abroad either now or in future and shall exercise all such powers as may from time to time be assigned to or vested in the employee by the Bank.

3. The Employee will be performing only managerial and/or supervisory/administrative duties and hence he/she shall not be entitled to any rights, privileges and benefits now applicable and/or that may become applicable to employees covered by The Industrial Disputes Act, 1947.”

The power and duty of the Petitioner is not specifically mentioned in the said Clause 2 and 3 of the Agreement.

24. The Respondent has examined witness MW1, Mr. Anirudh Dilip Takale and in his cross examination MW1 states, “The appointment letter under Ex.W1 does not disclose that the Petitioner was working under the Respondent in the managerial capacity. It is a fact that in Ex.M8 dated 16.7.2007 in the conciliation proceeding filed before the ALC, Vijayawada the Petitioner was referred as a workman.” In the same Ex.M8 the ALC(C) has not mentioned that the Petitioner was working in a managerial capacity. Further, witness also admitted that Petitioner was appointed as executive in the year 2003.

25. Hon’ble High Court in the case of **Union Carbide (India) Ltd., Vs. Ramesh Kumbla & Others, passed in Writ Petition No.2598 of 1994 on 15th and 16th December, 1998 have held :-**

“What should be taken into consideration and what parameters should be considered while resolving the controversy as to whether a given employee is a workman under the aforesaid definition of the Industrial Disputes Act, 1947 or not. Firstly, the dominant purpose of the employment is relevant and not some additional duties which may be performed by the employee. Secondly, it is not the designation but the nature of duty, thirdly, whether the employee can bind the Company in the matter of some decisions taken on behalf of the Company, and fourthly, the nature of the supervisory duties performed by the employee whether includes directing the subordinates and so on.”

In view of the fore gone discussion of Evidence and Law laid down by the Hon’ble Apex Court and Hon’ble High Courts as discussed above, Respondent failed to prove that Petitioner was discharging managerial functions. The Petitioner was appointed by the bank for recovery of default loans from the customers and he never discharged the supervisory duties/ in managerial capacity as alleged by the Respondent bank. There is no evidence on record to establish that there was any subordinate staff under the supervision of the Petitioner. Thus, he was not discharging his duty in the managerial capacity and therefore, he is a workman as per definition of I.D. Act, 1947. Thus, this petition is maintainable in the Industrial Tribunal.

Thus, Point No.II is answered accordingly.

26. **Point No.III:** In view of the finding and discussion made in Points No.I & II, the termination order of the Petitioner from service dated 24.12.2005, passed by Respondent is not justified and liable to be set aside and Petitioner is entitled for reinstatement into service.

Thus, Point No.III is answered accordingly.

AWARD

The action of the management of HDFC Bank Vijayawada in terminating the services of Shri A. Tirumala Rao, Ex-Executive 1A w.e.f. 24.12.2005 is held neither legal nor justified and impugned order is liable to be set aside, hence, set aside. The Petitioner’s claim is allowed and the Respondent Management is directed to reinstate the Petitioner into service from the date of his termination i.e., 24.12.2005 along with payment of 50% back wages, within a period of three months from the date of receipt of this order.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 28th day of December, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

Witnesses examined for the
Respondent

WW1: Sri A. Tirumala Rao

MW1: Sri Anirudh Dilip Takale

WW2: Sri N. Ramesh

Documents marked for the Petitioner**Ex.W1: Photostat copy of appointment letter dt.19.11.2003****Ex.W2: Photostat copy of suspension order dt. 15.11.2005****Ex.W3: Photostat copy of termination letter dt.24.12.2005**

Ex.W4: Photostat copy of representation dt. 7.4.2006

Ex.W5: Photostat copy of representation dt.22.5.2006

Ex.W6: Photostat copy of legal notice dt. 12.4.2006

Ex.W7: Photostat copy of representation to ALC(C), Vijayawada dt.16.6.2006

Ex.W8: Photostat copy of memo filed by M. Ramesh before ALC(C) dt. 8.9.2006

Documents marked for the Respondent

Ex.M1: Photostat copy of application for employment dt. 8.12.2003

Ex.M2: Photostat copy of appointment lr. dt. 19.11.2003

Ex.M3: Photostat copy of agreement of employment dt.28.5.2004

Ex.M4: Photostat copy of lr. of confession dt. 10.11.2005

Ex.M5: Photostat copy of lr. of suspension dt. 15.11.2005

Ex.M6: Photostat copy of lr. of termination dt.24.12.2005

Ex.M7: Photostat copy of submission before ALC(C), Vijayawada dt. 4.10.2005

Ex.M8: Photostat copy of conciliation proceedings dt.16.7.2007

नई दिल्ली, 28 फरवरी, 2024

का.आ. 399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विशाखापत्तनम पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (124/2018) प्रकाशित करती है।

[सं. एल - 34012/01/2018- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th February, 2024

S.O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 124/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Visakhapatnam Port Trust and their workmen.

[No. L-34012/01/2018- IR(B-II)]

SALONI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD**Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 26th day of December, 2023**INDUSTRIAL DISPUTE No. 124/2018**

Between:

Smt.B. Kanakamahalakshmi,

W/o Late B. Sudhakar Reddy,

DNo. 52-1-21, Near Ramalayam Temple,

Behind CMR Central,

Old Resapuvanipalem,
Visakhapatnam – 530 013.
AND

.....Petitioner

The chairman,
Visakhapatnam Port Trust,
Visakhapatnam.

... Respondent

Appearances:

For the Petitioner : M/s. K. Shankar Rao & M. Madhusudhan, Advocates

For the Respondent: M/s. K. Srinivasa Rao & K. Narsimha Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-34012/01/2018-IR(B-II) dated 2.11.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Visakhapatnam Port Trust and their workman. The reference is,

SCHEDULE

“Whether the action of the Management of Visakhapatnam Port Trust by not considering the employment to Sri B. Vinod Reddy, S/o Smt. B. Kanakamahalakshmi, W/o B. Sudhakar Reddy, Ex. Khalasi, Visakhapatnam Port Trust on compassionate grounds is justified? If not, what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 124/2018 and notices were issued to the parties concerned.

2. Both parties absent on the date fixed for Petitioner’s evidence. Petitioner did not adduce any evidence to substantiate his claim despite sufficient opportunity provided to her. It seems that Petitioner is not interested to pursue her case. Hence, in absence of any evidence in support of Petitioner’s claim, a ‘No Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 26th day of December, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 फरवरी, 2024

का.आ. 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (105/2009) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-110]

सलोनी, उप निदेशक

New Delhi, the 28th February, 2024

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 105/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12025/01/2024- IR(B-I)-110]

SALONI, Dy. Director

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 2nd day of January, 2024

INDUSTRIAL DISPUTE L.C. No. 105/2009

Between:

Sri P.V.A. Anand,

S/o Late Kameshwar Rao,

R/o Katta Subbarao Street,

N.R. Peta,

Eluru.

.....Petitioner

AND

1. The Deputy General Manager,
State Bank of India, Zonal Office,
Vijayawada. Krishna District. A.P.
2. The Assistant General Manager,
State Bank of India, Zonal Office,
Vijayawada, Krishna District. A.P.,
3. The Branch Manager,
State Bank of India, Vijayarari Branch,
West Godavari District. A.P.,

....Respondents

Appearances:

For the Petitioner : Sri M.V.L. Narasaiah, Advocate

For the Respondent: M/s. B.G. Ravindra Reddy & Y. Ranjeeth Reddy, Advocates

AWARD

The Petitioner who was an employee of the Respondent Bank has filed the Petition invoking Sec.2 A (2) of the I.D. Act, 1947, to set aside the removal order No.DPS/R-IV No.21 dated 22.4.2000 issued by the Respondent Bank, and to reinstate the workman with continuity of service and to pay back wages and all attendant benefits and to grant such other relief or reliefs as the Hon'ble Tribunal deems fit and proper.

2. **The averments made in the petition in brief are as follows:**

It is submitted that the petitioner was appointed as messenger in the Respondent bank on 2.1.1981 and transferred to Vijayarari Branch. While he was working as clerk in the Vijayarari branch, the respondent issued charge sheet dated 7-10-1997, on the allegation that petitioner was involved in misappropriation of certain amount. The respondent bank simultaneously lodged a complaint with the local police alleging that there was misappropriation of certain amount from the bank and got an FIR issued. It is submitted that on receipt of the above charge sheet dated 7.10.1997 the petitioner has submitted a detailed explanation, explaining all the factual aspects. But without considering the submissions made by the petitioner in proper perspective, a routine and mechanical enquiry, was conducted, wherein petitioner was not given any opportunity much less valid in nature. Enquiry Officer and the authorities of the respondent proceeded with a pre-determined notion to impose the punishment. It is further submitted that, while conducting the enquiry, the procedure of enquiry was not explained to the petitioner, either before or during the course of enquiry. Despite specific request, relevant documents, basing on which charges alleged, have not been supplied to the petitioner and reasonable opportunity was not afforded to the petitioner for adducing evidence and producing witnesses on his behalf or to cross-examine management witnesses. Enquiry was conducted in gross violation of Bank's Standing Regulations and principles of natural justice. Without considering the submissions made

by the petitioner, in gross violation of principles of natural justice, and procedure in vogue under Bank's Standing Orders, the Enquiry Officer has conducted the enquiry and held the petitioner as guilty of charges the second respondent issued the Impugned Order No.DPS/R-IV No.21, dated 22.04.2000, dismissing the petitioner from service. It is submitted that, against the said impugned order No.DPS/R-IV No.21, dated 22.04.2000 the petitioner preferred appeal before first respondent on but said appeal was dismissed vide proceedings DPS/DGM/74 dated 20-06-2000. It is submitted that on the base of the compliant given by the respondent bank a criminal case was registered, C.C. no 276 of 1998 before the Hon'ble II Addl. Judicial Magistrate of First Class at Eluru. It is further submitted that the petitioner was acquitted in the above said criminal case, C.C. no 276 of 1998 by the Hon'ble II Addl. Judicial Magistrate of First Class at Eluru, vide its judgment dated 19-06-2000 and it became final. It is submitted that in these circumstances the petitioner filed W.P.No. 13285/2000 before Hon'ble High Court of A.P., the said Writ Petition was dismissed vide its orders dated 26-06-2002, aggrieved by the said orders the petitioner preferred an appeal by filling W.A.No, 1869 of 2002, the Hon'ble High Court of A.P. disposed of the above Writ Appeal No. 1869 of 2002 directing the petitioner to avail provisions available under Industrial Disputes Act. As per directions of the Hon'ble High Court of A.P. now the petitioner is filing the present petition before this Hon'ble Court. It is submitted that the disciplinary proceedings and the criminal case were based on the set of facts and charges, the said criminal case, C.C. 276 of 1998 was ended in acquittal vide its Judgment dated 19-06-2000 and it became final. In the catena of judgments Apex Court held that "When charges in the domestic enquiry and criminal cases were same and the criminal case acquitted the workmen, then the workmen is entitled for reinstatement". This aspect is not considered by the respondents. It is submitted that impugned order no. No.DPS/R-IV No.21, dated 22.04.2000, issued by the second respondent is wholly illegal arbitrary, discriminatory on the following among other grounds:-

- a) Procedure of enquiry was not explained to the petitioner, either before or during the course of enquiry; Despite specific request, documents relied upon, have not been furnished to the petitioner;
- b) Opportunity of Defense Assistance was not afforded to the petitioner
- c) Impugned Order of dismissal is a Non-speaking order;
- d) None of the witnesses, deposed on behalf of Management are relevant witness;
- e) Neither proper opportunity to adduce evidence or to produce witnesses was provided to the petitioner; nor, opportunity to cross-examine Management witnesses is afforded to him;

It is to humbly submit that assuming that, charge alleged against the petitioner is correct; and held proved during the enquiry, even then, imposition of punishment of dismissal for misconduct cause is too harsh and disproportionate. Petitioner is aged 52 yrs and he has got another 6 yrs of service and at this age he can't gain any other employment. As the petitioner is the lone earning member in his family dismissal from service is causing great prejudice and irreparable loss not only to the petitioner but also to all of his family members. Unfortunately, before imposing the punishment of dismissal from service. Respondents have not given any chance to hear the petitioner. As such imposition of punishment of dismissal from service is too harsh and disproportionate to the charge alleged. Therefore prayed to set-aside the removal order dated 22-04-2000, issued vide proceedings No. No.DPS/R-IV No.21 and to reinstate the workmen with continuity of service and pay back wages and all attendant benefits.

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

It is submitted that originally the Petitioner was appointed as a Messenger in the respondent bank and later was promoted as clerk-cum-cashier in the course of his service. While working in the clerical and cash counters at Vijayarai Branch of State Bank of India, it has come to the notice of the bank, that the petitioner had committed very serious misconduct. Immediately the petitioner was placed under suspension w.e.f. 20-5-1997 and he was issued with charge sheet dated 7.10.1997, which reads as under:-

"2(i) It is reported that while working in the Cash counter at our Vijayarai Branch, you received the cash tendered for credit of the customer's accounts, entered credit entries in the pass books of the customers, authenticated the resultant balance in the pass books with your initials but you did not account for the cash so received in the Bank's books and misappropriated the amounts. The particulars are as follows:

Date of accepting the cash	A/c No. of the customer	Name of the customer	Amount Rs.
7.5.1997	SB a/c P 6/1006	Narra Rambabu	13,500-00
12.5.1997	SB a/c AG 10/1839	Mandalapu Subba Rao	16,000-00
12.5.1997	SB a/c AG 2/229	Vanga Subba Reddy	40,000-00
13.5.1997	SB a/c Ag 2/276	Pulagam Subba Reddy	12,000-00

13.5.1997	SB a/c P 2/374	Kurasala Radhakrishna	19,000-00
13.5.1997	SB a/c P 6/1006	Narra Rambabu	4,700-00
13.5.1997	SB a/c P 2/381	Annavaarapu Rajaratnam	7,000-00
13.5.1997	SB a/c P 10/1961	Adabala Bhagyalakshmi	8,000-00
13.5.1997	SB a/c P 2/223	Kathari Venkateswara Rao	26,400-00

Date not mentioned in the pass book

(ii) It is reported that you issued a Savings Bank withdrawal dt. 5.8.1992 for Rs. 500/- to Sri Y.S.Rao, State Bank of India, Ravulapalem which was returned unpaid on 12.8.92 by our Vijayarai Branch with a remark "Refer to Drawer"

(iii) It is reported that you issued a Savings Bank Cheque bearing No. 176651 dt. 21.8.96 for Rs. 40,000/- in favour of Sri B.Appa Rao which was returned

(iv) You absented yourself from Bank's duty from 14.5.97 without submitting any leave letter for sanction till you were suspended from Bank's Service w.e.f. 20.5.97 vide the Assistant General Manager and Disciplinary Authority, Region –IV Staff Con letter No.19 dated 20.5.1997.

3(a) Your acts of not accounting for the cash received at the Bank's Cash counter in the Bank's books, making credit entries in the pass books of the customers and authenticating the resultant balance in the pass book with your

initials and misappropriating the cash received in the cash counter are acts of

gross misconduct which are prejudicial to the interests of the Bank in terms of paragraph 521(4)(j) of the Sastry Award, read with the paragraph 18.28 of the Desai Award and subsequent agreements.

b) Your acts of issuing a withdrawal and a SB cheque without maintaining sufficient balance is in violation of conduct rules and an act of willful disobedience of lawful and reasonable orders of the management which is an act of gross misconduct in terms of paragraph 521 (4)(e) of the Sastry Award read with the paragraph 18.28 of the Desai Award and subsequent agreements.

(c) Your act of absenting yourself from Bank's duty without leave sanctioned,

is an act of minor misconduct in terms of paragraph 521 (5)(a) of the Sastry Award read with the paragraph 18.28 of the Desal Award, and subsequent agreements."

It is submitted that the Petitioner was called upon to submit his explanation to the above charges. The petitioner has submitted his explanation dated 22.11.1997, giving one line reply stating that he was denying the charges. As his explanation was found to be unsatisfactory, it was decided to conduct an enquiry into the charges. Sri K.Srinivasan, Chief Manager, Zonal Office, Vijayawada, was appointed as the Enquiry Officer and Sri A.S.K. Krishna Murthy, Deputy Manager, Zonal Office, Vijayawada was appointed as the Presenting Officer. The enquiry was commenced on 5-11-1998 and it was concluded on 13.5.1999. The Petitioner was defended by Sri T.S.V.S. Sarma, General Secretary, SBI Staff Union, Hyderabad. Ten witnesses were examined in support of the charges. 37 documents were marked as exhibits. Whereas, two documents were marked as exhibits on behalf of the petitioner. No witnesses were examined by the petitioner. The enquiry was conducted in conformity with the principles of natural justice, giving due and reasonable opportunity to the petitioner. The enquiry officer submitted his report dt. 26.6.1999. A copy of the report was forwarded to the petitioner and he had also submitted his submissions dt. 15.7.1999. After considering the entire material on record, the Disciplinary Authority passed the order dt. 23.10.1999 proposing the punishment of dismissal. The petitioner submitted a representation dt. 11.3.2000. The disciplinary authority, after considering the entire matter, passed the final order dt. 22.4.2000 imposing the punishment of dismissal. The petitioner submitted an Appeal against the said dismissal order on 8.6.2000 and the Appellate Authority by his Proceedings dt. 20.6.2000 dismissed the Appeal. It is submitted that the Petitioner filed W.P.No. 13785 of 2000, questioning the dismissal order and the said Writ Petition was dismissed on 6.12.2004 by the Hon'ble High Court. As against that he filed Writ Appeal No. 1869 of 2002 and the same was dismissed. It is submitted that in view of the above the I.D. is not maintainable and the same is liable to be dismissed. It is submitted that the petitioner has committed very grave and serious misconduct and the charges are proved in the enquiry conducted by the Bank. The disciplinary authority has considered the entire material on record and has come to the conclusion that the petitioner should be dismissed from service. The respondent has lost confidence on the petitioner and in view of the seriousness of the charges, he does not deserve to be in the employment of a financial institution. The acquittal in the criminal case has nothing to do with the disciplinary proceedings initiated by the Bank. There are absolutely no merits in the I.D. and the same is liable to be dismissed. It is submitted that the enquiry was conducted in conformity with the principles of natural justice

without any prejudice, it is submitted that for any reason, if this Hon'ble Tribunal holds the enquiry as illegal, the Bank may be given an opportunity to justify the punishment by adducing the evidence before the Tribunal. It is submitted that the action of the respondent in dismissing the Petitioner from service is legal and valid. The Criminal proceedings and the disciplinary proceedings are different and independent of each other and the result of the criminal proceedings has no bearing of whatsoever nature over the disciplinary proceedings. It is therefore, prayed that this Hon'ble Tribunal may be pleased to pass an Award, dismissing the I.D. and to pass such other order or orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

4. The perusal of the record reveals that the domestic enquiry conducted by the Respondents in this case is held as legal and valid vide order dated 17.3.2016.

5. The respondent has submitted written arguments u/s 11A of the Industrial Disputes Act, 1947, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written argument.

6. On the basis of rival pleadings of both the parties the following points emerge for determination:-

I. Whether the Departmental enquiry held against the Petitioner is legal and valid?

II. Whether the action of the Respondent Management in issuing the dismissal order dated 22.4.2000 vide proceedings No.DPS/R-IV No.21, of the Petitioner for removing him from service is legal and justified?

III. To what relief is the petitioner entitled for?

Findings:-

7. **Point No.I:** The Departmental Enquiry has been held legal and valid by the Court vide order dated 17.3.2016.

This Point is answered accordingly.

8. **Point No.II:-** Petitioner in his petition claimed that he was appointed as a messenger in the Respondent bank on 2.1.1991 and later on promoted. While he was working as a clerk in Vijayarari branch, the Respondent issued a charge sheet dated 7.10.1997 with the allegation that the Petitioner was involved in misappropriation of certain amounts. Respondent bank simultaneously lodged a police complaint to the local Police alleging that there was misappropriation and FIR issued. Further, Petitioner submits that on receipt of the charge sheet dated 7.10.1997 Petitioner submitted a detailed explanation explaining the factual aspects. But without considering the submissions made by the petitioner in proper perspective, a mechanical enquiry, was conducted, wherein petitioner was not given any opportunity much less valid in nature. The Enquiry Officer and the authorities of the respondent proceeded with a pre-determined notion of imposing the punishment of dismissal. Further, Petitioner submits that, the dismissal order dated 22.4.2000 is illegal, arbitrary and discriminative on the ground that procedure of enquiry was not explained to the petitioner, either before or during the course of enquiry and opportunity of defence assistance was not afforded to him. Further, the impugned order of dismissal is not a speaking order since none of the witnesses deposed on behalf of the Management and relevant witness not examined. Further, Petitioner argued that neither proper opportunity to produce the evidence or to produce the witness was provided to the Petitioner.

9. All the pleas taken by the Petitioner as submitted above has been dealt with and answered in the order dated 17.3.2016 while holding the Departmental Enquiry legal and valid. Hence, no need to discuss again at this stage. Further the Petitioner's counsel argued that the disciplinary proceedings and criminal case were based on the same set of facts and charges and the criminal case CC No.276/1998 has been ended in acquittal vide judgement dated 19.6.2000 and it became final. In catena of judgements Hon'ble Apex Court has held that, when charges in the domestic enquiry and criminal case were same and criminal case acquitted the workmen, then the workmen is entitled for reinstatement. But, this aspect has not been considered by the Respondent Management.

10. On the other hand, Respondent counsel contended that the Petitioner has committed very grave and serious misconduct and the charges have been proved in the departmental enquiry conducted by the bank. The Disciplinary Authority has considered the entire material on record and has come to the conclusion that the Petitioner should be dismissed from service. Respondent contended that the Respondent has lost confidence on the Petitioner and in view of the seriousness of the charges he does not deserve to be continued in the employment. Criminal case proceedings has nothing to do with the Departmental Enquiry initiated by the bank. Respondent contended that there is absolutely no merits in the present petition and the same is liable to be dismissed.

11. In support of his submission Petitioner has filed the photocopies of the judgement of the Court of II Addl. Judicial Magistrate of Ist Class, Eluru the perusal of order of Court reveals that in the case of CC No.275/98 between Sub-Inspector of Police and Puvvada Aravind Anand, the Court has acquitted the accused Petitioner from the charges u/s. 406, 408 and 420 of I.P.C..

To fortify his submission, Petitioner has relied upon certain decisions of the Hon'ble Apex Court, which are being discussed below:-

Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., and Anr dated 30.3.1999, Hon'ble Apex Court have held:-

"In the instant case, the Superintendent of Police had raided the residential premises of the Appellant and had recovered a mining sponge gold ball weighing 4.5 grams and 1276 grams of 'gold bearing sand'. It was on this basis that criminal case was launched against him. On the same set of facts, constituting the raid and recovery, departmental proceedings were initiated against the appellant as the 'recovery was treated to be a 'misconduct.' On the service of the charge sheet, the appellant raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. He requested that the decision of the criminal case may be awaited, but his request was turned down. The request made a second time for that purpose also met the same fate. When the appellant approached the High Court, liberty was given to the respondents to stay the departmental proceedings if they considered it appropriate but they were directed to dispose of the appellant's appeal against the order by which he was placed under suspension. The order of the High Court had no effect on the respondents and they decided to continue with the departmental proceedings which could not be attended by the appellant as he informed the Inquiry Officer that he was ill. His request for adjournment of the departmental proceedings on that ground was not acceded to and the proceedings continued ex-parte against him. He was ultimately found guilty of the charges and was dismissed from service.

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand."

In the said case Hon'ble Apex Court has found that, the criminal case as also the Departmental Enquiry were on identical sets of facts. Namely, 'the raid conducted at the Appellant's residence and recovery of incriminating articles therefrom and the finding recorded by the Inquiry Officer and a copy of which has been placed before the Court, that indicate charge framed against the Appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the Appellant and had effected recovery. They were the only witnesses examined by the Enquiry Officer and the Inquiry Officer relying upon their statements, came to the conclusion that no search was conducted nor was any recovery made from the residence of the Appellant. The whole case of the prosecution was thrown out and the Appellant was acquitted. But the facts in the present case, are quite different. The witnesses examined in the criminal case as well as Departmental Enquiry proceedings, has been examined independently in both proceedings separately and the evidence lead by prosecution in the criminal case, has not been read into or taken into consideration by the Enquiry Officer in his enquiry report. The Enquiry Officer after examining as many as eleven witnesses during the enquiry proceedings against Petitioner, has come to the conclusion that the charges levelled against the Petitioner has been held proved. In the present matter the criminal case and Departmental Enquiry were not based on identical set of facts. Therefore, the facts of the decisions as discussed above relied upon by the Petitioner does not apply in the present matter. Therefore, the Petitioner does not find any support in the present matter by the decision of the Hon'ble Apex Court as discussed above.

In the case of State of Bikaner & Jaipur vs. Nemi Chand Nalwaya in Civil Appeal No.5861/2007 dated 1.3.2001 the Hon'ble Apex Court have held:-

"6. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.

The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6)

SCC 749, *Union of India vs. G. Gunayuthan* - 1997 (7) SCC 463, and *Bank of India vs. Degala Suryanarayana* - 1999 (5) SCC 762, *High Court of Judicature at Bombay vs.*

Shahsi Kant S Patil - 2001 (1) SCC 416).

7. When a court is considering whether punishment of 'termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank can not be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

9. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

In view of the Law laid down by the Hon'ble Apex Court as discussed above, since the enquiry has been fairly and properly held against the Petitioner and findings are based on evidence. There is no ground for interfering with the finding in the Departmental Enquiry held against the Petitioner. The Petitioner failed to prove that the finding in the enquiry is based on no evidence or these are perverse. Neither it can not be said that the punishment of termination from service imposed upon the Petitioner, who happens to be bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct. By the said proved misconduct against the Petitioner the employer has lost confidence in him. Therefore, I find no ground to interfere in the finding of the enquiry against the Petitioner.

Further, in the case of Chairman and Managing Director vs. P.C. Kakkar Chairman and Managing Director in Civil Appeal No.3433/2000 and 1185/2003 dated 11.2.2003 wherein, Hon'ble Apex Court have held:-

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik* (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.."

Therefore, in view of the Law laid down by the Hon'ble Apex Court as discussed above, in the present matter, the Petitioner who was a bank employee has been found guilty of committing misconduct of misappropriation of the customer's deposited amounts and has lost confidence of the employer and consequently has been terminated from the service by the bank Management after conducting Departmental Enquiry. The plea of the Petitioner that subsequently he has been acquitted in the criminal case by the judgement of the Criminal Court, therefore, he is liable to be reinstated into service, is not acceptable.

12. Once it is held that the domestic enquiry is legal and proper, the next question arises for consideration as to whether the punishment imposed upon the Petitioner is just and legal or it is disproportionate to the gravity of the charges. It is not in dispute that all the charges which have been held proved in the domestic enquiry against the Petitioner were of serious in nature, which are being enumerated as below:-

"2(i) It is reported that while working in the Cash counter at our Vijayarai Branch, you received the cash tendered for credit of the customer's accounts, entered credit entries in the pass books of the customers,

authenticated the resultant balance in the pass books with your initials but you did not account for the cash so received in the Bank's books and misappropriated the amounts. The particulars are as follows:

Date of accepting the cash	A/c No. of the customer	Name of the customer	Amount Rs.
7.5.1997	SB a/c P 6/1006	Narra Rambabu	13,500-00
12.5.1997	SB a/c AG 10/1839	Mandalapu Subba Rao	16,000-00
12.5.1997	SB a/c AG 2/229	Vanga Subba Reddy	40,000-00
13.5.1997	SB a/c Ag 2/276	Pulagam Subba Reddy	12,000-00
13.5.1997	SB a/c P 2/374	Kurasala Radhakrishna	19,000-00
13.5.1997	SB a/c P 6/1006	Narra Rambabu	4,700-00
13.5.1997	SB a/c P 2/381	Annavaarapu Rajaratnam	7,000-00
13.5.1997	SB a/c P 10/1961	Adabala Bhagyalakshmi	8,000-00
13.5.1997	SB a/c P 2/223	Kathari Venkateswara Rao	26,400-00

Date not mentioned in the pass book

- (ii) It is reported that you issued a Savings Bank withdrawal dt. 5.8.1992 for Rs. 500/- to Sri Y.S.Rao, State Bank of India, Ravulapalem which was returned unpaid on 12.8.92 by our Vijayarai Branch with a remark "Refer to Drawer"
- (iii) It is reported that you issued a Savings Bank Cheque bearing No. 176651 dt. 21.8.96 for Rs. 40,000/- in favour of Sri B.Appa Rao which was returned
- (iv) You absented yourself from Bank's duty from 14.5.97 without submitting any leave letter for sanction till you were suspended from Bank's Service w.e.f. 20.5.97 vide the Assistant General Manager and Disciplinary Authority, Region –IV Staff Con letter No.19 dated 20.5.1997."

The perusal of these charges as stated above held proved in Departmental Enquiry are of very serious in nature and it goes to gross root of integrity of the employee and loss of confidence of the employer in him.

13. Employer had therefore, every right to initiate domestic enquiry against the employee for such serious misconduct and behaviour. In the facts and circumstances of the case as discussed above, all the charges being serious in nature, therefore, the order of dismissal passed against the Petitioner can not be faulted with and nor it can be said in any way disproportionate to the gravity of the charges. In other words, punishment of dismissal was proportionate with the gravity of charges and hence, deserves to be upheld.

Thus, Point No.II is answered accordingly.

14. **Point No. III:** In view of the fore gone discussion, and findings arrived at Points No.I & II, the Petitioner is not entitled to any relief as prayed for and Petition is liable to be dismissed.

This Point No.III is answered accordingly.

AWARD

In the result, it is held that the action of Respondent bank in removing the Petitioner Sri P.V.A. Anand vide order dated 22.4.2000 from service is legal and justified. The Petitioner is not entitled to any relief as prayed for. The petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 2nd day of January, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 फरवरी, 2024

का.आ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (175/2001) प्रकाशित करती है।

[सं. एल - 12012/25/2001- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 28th February, 2024

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 175/2001) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12012/25/2001- IR(B-I)]

SALONI, Dy. Director

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD**Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023**INDUSTRIAL DISPUTE No. 175/2001**

Between:

Sri B. Sree Ramulu,

Diguvapet,

Siddhavatam (Post),

Distt.Cuddapah -516001.

... Petitioner

And

The Dy.General Manager,

State Bank of India,

Zonal Office, Renigunta Road,

Tirupati (A.P.)-517 501.

.....Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/25/2001-IR(B.I) dated 10.8.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of India, Siddhavatam Branch in terminating services of Sri B. Sree Ramulu, Messenger, is justified? If not, what relief the workman is entitled?”

After receipt of the reference, it was numbered as ID No.175/2001 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

- “(1) affirming the impugned common order of the learned single Judge to the “extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;
- (2) The further findings and directions issued through the impugned common order are vacated;
- (3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,
- (4) the parties to make appearance before the Tribunal on the given date.”

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, “Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal/The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.”

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. The workman filed his claim statement with the averments in brief as follows:

The petitioner, Sri B. Sree Ramulu was working as a Messenger in the State Bank of India from 1990 to 1991. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to Scheduled Caste. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 2 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel “found suitable for permanent appointment” by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after 1.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel be valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. “there will be no temporary appointments in the subordinate cadre”, except on a restrictive basis in the specified category, “from amongst empanelled candidates as per existing guidelines of the Bank”. Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed

by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated 16.8.1990 stated in its counter affidavit as follows:

“Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment aha absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered

for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from 1.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the candidates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subordinate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one time and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no

Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have been done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990. In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not bind the workmen as it has no legal entity. However, the said M.O.U. has not been published anywhere to be brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give wide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployed, as he could not secure any alternative employment in spite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01.07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under

several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of

termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 6 documents which were marked as Ex.W1 to W6. Ex.W1 is service certificate, Ex.W2 is the call letter for interview. Ex.W3 is panel list, Ex.W4 is SSC fail memo, Ex.W5 is Board of Secondary education certificate and Ex.W6 is caste certificate. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

- I. Whether the action of the Respondent Management in terminating the services of the workman, Sri B. Sree Ramulu, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?
- II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?
- III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II:-** The workman claims that he had been working with the Respondent Bank on 1.1.1990 on temporary basis. In the year 1992, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1992 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1991, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arisen. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W1 is the service certificate according to which the workman has worked for total number of 89 days. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was appointed as temporary messenger on temporary basis in 1989 for 89 days. I was not sponsored by any employment exchange. I did not work

continuously. I used to work depending upon availability of work in the branch. I applied for appointment as Messenger, in response to the advertisement issued by the bank and the union in the year 1992, I was called for interview and my name was included in the panel of temporary messengers in the year 1992. The panel was prepared basing on the no. of days of service put in by the temporary employees. Some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel. The witness adds that he is not aware of the settlements. I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank. I am not having any document to show that any of my juniors are continuing in service. I was not given any letter stating that I was terminated from service. It is true that I did not give any representation stating that I was terminated from service and that I want reinstatement into service. It is not true to say that I was terminated from service and that I am not getting the work as the vacancies in the bank were filled up on regular basis as per the settlements. I did not work for 240 days in any year in my entire service in the bank.” On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn’t come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon’ble Apex Court have held that:**

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon’ble Apex Court have held:-**

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Ors. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case of **State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held:-**

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held :**

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri B. Sree Ramulu, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Thus, Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri B. Sree Ramulu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the

Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

WW1: Sri B. Sree Ramulu

MW1: Sri Aluru Rama Rao

Documents marked for the Petitioner

- Ex.W1: Photocopy of service certificate
- Ex.W2: Photocopy of Call letter for interview
- Ex.W3: Photocopy of panel list
- Ex.W4: Photocopy of SSC fail memo
- Ex.W5: Photocopy of Board of Secondary Education certificate
- Ex.W6: Photocopy of caste certificate

Documents marked for the Respondent

- Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
- Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
- Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
- Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
- Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
- Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
- Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
- Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
- Ex.M9: Photocopy of statement of 1989 Non0messenger panel
- Ex.M10: Photocopy of statement of 1992 panel
- Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
- Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 28 फरवरी, 2024

का.आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (101/2002) प्रकाशित करती है।

[सं. एल - 12012/178/2000- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 28th February, 2024

S.O. 402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 101/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Stat Bank of India and their workmen.

[No. L-12012/178/2000- IR(B-I)]

SALONI, Dy. Director

ANNEXURE
IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023

INDUSTRIAL DISPUTE No. 101/2002

(Old ID No.122/2000)

Between:

Sri Alluri Nageswara Rao,

Kolumulapalli(V),

Lingareddyapalli (P.O.) C.K. Dinne,

Distt. Cuddapah -516001.

... Petitioner

And

The Dy.General Manager,

State Bank of India,

Zonal Office, Renigunta Road,

Tirupathi-517501

.....Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent : Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/178/2000-IR(B.I) dated 19.9.2000 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of India, Cuddapah Main Branch is justified in terminating Shri Alluri Nageswara Rao, Messenger from the services of the Bank? If not, what relief he is entitled?”

After receipt of the reference, it was numbered as ID No.101 /2002 (Old ID No.122/2000) and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon’ble High Court vide WP No. 6470/2006 & batch wherein Hon’ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon’ble High Court held:-

- “(1) affirming the impugned common order of the learned single Judge to the “extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;
- (2) The further findings and directions issued through the impugned common order are vacated;

- (3) *all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,*
- (4) *the parties to make appearance before the Tribunal on the given date."*

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, "Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR, J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal/The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. The workman filed his claim statement with the averments in brief as follows:

The petitioner, Sri Alluri Nageswara Rao working as a Messenger in the State Bank of India from 1985 to 1997. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to SC community. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service of 13 years and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270 days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after 1.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel be valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth, "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated 16.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The

Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December, 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated 16.8.1990 stated in its counter affidavit as follows:

“Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives”.

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed either for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from 1.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the candidates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subordinate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one time and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990 In fact the management failed to

implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not bind the workmen as it has no legal entity. However, the said M.O.U. has not been published anywhere to be brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give wide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman were kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adheres to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June, 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployed, as he could not secure any alternative employment in spite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A':

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01.07.1975.

iii) Category 'C':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01.07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for

vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be

considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 7 documents which were marked as Ex.W1 to W7. Ex.W1 is service certificate, Ex.W2 is letter regarding his service. Ex.W3 is the interview call letter. W4 is Panel list, Ex.W5 is the service certificate, Ex.W6 is the caster certificate, Ex.W7 is the transfer certificate. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8

is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

- I. Whether the action of the Respondent Management in terminating the services of the workman, Sri Alluri Nageswara Rao, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?
- II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?
- III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II:-** The workman claims that he had been working with the Respondent Bank on 17.6.1985 for 172 days on temporary basis. In the year 1989, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1989 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1991, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W1 and W5 are the service certificates. In cross examination, WW1 states that, on the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment as a temporary messenger." Further, he states, "I was given appointment as temporary Messenger for a period of 172 days w.e.f 17.6.1985." Further the witness states, "I did not give any representation alleging that I was terminate dfrom service and that I want employment in the bank. It is not true to say that I was not terminated from service and that I am not getting the work as the vacancies were already filled up in the bank with the temporary employees who are seniors to me. It is true that I did not work for 240 days in any year in my entire service in the bank." On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies

were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225**, the Hon'ble Apex Court have held that:

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment. However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999**, three judges bench of Hon'ble Apex Court have held:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Ors. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994**, the Hon'ble High Court observed:-

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case of **State of U.P. v. Harish Chandra AIR 1996 SC 2173**, the Hon'ble Apex Court have held:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091**, it was held :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri Alluri Nageswara Rao, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri Alluri Nageswara Rao, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Sri Alluri Nageswara Rao

Witnesses examined for the
Respondent

MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate

Ex.W2: Photocopy of letter reg. Ex.W1

Ex.W3: Photocopy of call letter for interview

Ex.W4: Photocopy of panel list

Ex.W5: Photocopy of service certificate

Ex.W6: Photocopy of caste certificate

Ex.W7: Photocopy of transfer certificate

Documents marked for the Respondent

- Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
- Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
- Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
- Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
- Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
- Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
- Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997
- Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.
- Ex.M9: Photocopy of statement of 1989 Non messenger panel
- Ex.M10: Photocopy of statement of 1992 panel
- Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
- Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 28 फरवरी, 2024

का.आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (73/2012 & L.C. NO. 2/2012) प्रकाशित करती है।

[सं. एल - 12012/23/2012- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 28th February, 2024

S.O. 403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (73/2012 & L.C. NO. 2/2012) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen.

[No. L-12012/23/2012- IR(B-II)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: -**Sri Irfan Qamar**

Presiding Officer

Dated the 16th day of January, 2024

INDUSTRIAL DISPUTE No.73/2012

& L.C.No. 2/2012

Between:

Sri Mr. Mohan Yuvaraj

S/o G. Mohan,

R/o Plot no. 12, Gandhi Nagar,

Canara Bank Colony, Vanastalipuram,

Hyderabad.

.... Petitioner

And

1. The General Manager,
Appellate Authority, Canara Bank,
Personal Wing, Head Office,
Bangalore - 2.
2. The Deputy General Manager & Disciplinary Authority,
Canara Bank, Disciplinary Action Cell,
HRM Section, Circle Office, Himayathnagar,
Hyderabad- 29.Respondents

Appearances:

For the Petitioner : Smt. S.V. Indira, Advocate

For the Respondent: M/s.Vamaraju Sri Krishnudu, K. Babu Rao, S. Soumitri Sarma, P. Srinivas Reddy,
M. Srikanth & B. Santhosh Kumar, Advocates

COMMON AWARD

The Government of India, Ministry of Labour by its order No. L- 12012/23/2012-IR(b-II) dated 22.11.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Canara Bank and their workman. The reference is,

SCHEDULE

“Whether the action of the Management of Canara Bank, Circle Office, Hyderabad in awarding the punishment of compulsory retirement to Sri Mohan Yuvaraj, Ex-Clerk vide Order Dated 22.6.2009, is legal and justified? What relief the applicant workman is entitled to?”

The reference is numbered in this Tribunal as **I.D. No. 73/2012** and notices were issued to the parties concerned. The Petitioner has also filed a petition under Sec.2A(2) of the Act with the same prayer which was numbered as **LC No.2/2012**. Therefore, both cases were clubbed as one and same, vide order dated 12.1.2016 and accordingly a common award is being passed.

2. **The averments made in the petition in brief are as follows:**

It is submitted that the Petitioner have joined the service of the Canara Bank as Clerk at Pattarghetti Branch in the month of June 1995 and subsequently, his services were regularized. Since the date of joining into the service, he was discharging his duties as per the instructions of the superiors and working continuously with clean record of service till he was illegal terminated from service by making him to take compulsory retirement dated 22.6.2009. It is submitted that while the Petitioner was issued with a charge sheet dated 5.1.2009, alleging that he used to leave the branch abruptly and come back after some time without any information /permission, when he was working work at Kadthal Branch it was alleged that while issuing the tokens to the customers, Petitioner used to give wrong token numbers, which resulted in confusion, while making payment to the customers at the cash counter and taking printout of ledger entries of one customer to another customer while updating the pass books and that the Petitioner resorted to imitating the initials of Smt. Kausalya, Officer of the Branch on the withdrawal order forms and further alleged that he was in the habit of writing incorrect information in the pass books and scribbling in the pass book of the customers. And in another charge, it was alleged that Petitioner has misbehaved with Smt. B. Kranthi, Clerk of the Branch by taking away the food from her Tiffin Box, while she was taking her lunch in the Branch. It is submitted that the management has suspended me from service by order dated 19.12.2008. It is submitted that Petitioner has submitted his explanation to the Manager and explained the circumstances to the alleged charges, but the same is not considered by him. Without considering his explanation, departmental enquiry was ordered and Enquiry Officer was appointed. Petitioner has attended the Enquiry as per the schedule in the enquiry notice dated 31.1.2009, informing the date of enquiry on 2.2.2009 at place as Circle Office, Hyderabad. Before the enquiry officer, categorically denied the charges leveled against him. The enquiry officer without explaining the procedure initiated the enquiry into the charges. The Enquiry officer asked him to submit his explanation, however, the Petitioner categorically explained the circumstances and submitted his written explanation and requested to consider the same and also record the same. It is further submitted that the said proceedings are vitiated for material irregularities as it is illegal and not in accordance with the principles of natural justice. It is further submitted that the copy of the enquiry proceedings were not furnished to him till the date of the order of Compulsory retirement but he was issued with the findings of the Enquiry Officer holding the Petitioner guilty of charges. It is submitted that without considering his explanation to the charges, the disciplinary authority imposed capital punishment of compulsory retirement by an office order dated 22.6.2009 based on the report of the investigation officer. Being aggrieved by the said orders, Petitioner filed appeal dated 29.10.2009 to the Appellate Authority, but the appellate authority vide

its order dated 10.4.2010, confirmed the order of Compulsory retirement from service passed by the Disciplinary Authority, without considering my clean record of service and merits. Therefore, the said order of the Compulsory retirement is illegal and unjustified. It is submitted that aggrieved by the punishment order dated 22.6.2009, and the same is confirmed by the Appellate Authority by rejecting the appeal of the petitioner, having no other alternative remedy, the petitioner is constrained to approach this Hon'ble Authority for necessary relief. It is submitted that the Appellate Authority ought to have seen that the Disciplinary Authority has not conducted the enquiry properly, opportunity of cross examination of witness was not afforded to him. But, in the enquiry report it was stated that the Petitioner has not chosen to cross examine the witness which is illegal and baseless. The Disciplinary Authority arrived at the conclusions with regard to four allegations mentioned in the 1st charge only based on mere assumptions and presumptions as there is specific details / clarity with regard to the same and also no supporting evidence was produced in the enquiry. The Disciplinary Authority failed to see that the capital punishment imposed is grossly disproportionate to the gravity of misconduct alleged to have been proved. The Disciplinary Authority ought to have seen that except the statement of management witnesses, there is no other evidence and those complaints were taken basing on the instructions of the management. Therefore, the same cannot be taken into consideration, though the Appellate Authority do not assign any reasons while confirming the punishment of compulsory retirement. The Disciplinary Authority and Appellate Authority ought to have seen the his past conduct, neither misconduct was complained nor any Memo has been issued to him. Hence the compulsory retirement ought not to have been imposed by the Management. No show cause notice is issued to petitioner. Therefore the punishment imposed by the respondents liable to be set aside as there is no reasonable opportunity is given to the petitioner before imposing the capital punishment. The entire enquiry is in violation of Principles of Natural Justice. It is submitted that the petitioner has filed an application before the Assistant Commissioner of Labour [Central] and conciliation proceedings are conducted by the Authority. However, the same is concluded in failure. Hence, the present dispute. It is submitted that the Petitioner have put in 14 years of service with the Canara Bank and he is still having 20 years of service. Therefore, the said order of Compulsory Retirement do not commensurate with the gravity of misconduct alleged to have been proved against him. The said capital punishment is disproportionate and unwarranted. It is further submitted that Petitioner is the sole bread earner in the family therefore the said job is essential to meet his family requirements and suffering financial difficulties. Ever since the date of my termination of service, he remained unemployed and could not secure any alternative employment inspite of best efforts. It is therefore prayed to set aside the order of Compulsory retirement dated 22.6.2009 passed by the Deputy General Manager & Disciplinary Authority and the order of appellate authority dated 10.04.2010 confirming the order of compulsory retirement and direct the management of the Canara Bank to reinstate the Petitioner into service with continuity of service, with back wages and all other attendant/service benefits.

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

The Respondent Bank has various branches across the country/abroad and Kadthal branch is one of such branches. The Petitioner was earlier working at Kadthal branch of the Respondent Bank as clerk from 10.10.2008 to 02.12.2008. While working at Kadthal branch, the following irregularities have been observed on the part of the Petitioner: The Petitioner used to leave the branch abruptly and come back after some time without information/permission. While issuing the tokens to the customers, he used to record same token number on different cheques or he used to give wrong token numbers which resulted in confusion while making payment to the customers at the cash counter. He used to take print out of ledger entries of one customer to another customer while updating the pass books. He resorted to imitating the initials of Smt. Kousalya, officer of the Branch on the withdrawal order forms. The petitioner used to write incorrect information in the pass books and scribble in the pass books of the customers. The customers also have complained that he used to delay in attending to them while working in the branch. The Petitioner misbehaved with one lady Clerk of the Branch by approaching her very nearer, pushed his shirt up and removed his trouser and made ugly postures. The above amounted to sexual harassment against the lady staff at the work place. With regard to the above allegations, the Bank has called for explanation, vide letter HYC HRM E.113 (i) 7527 2008 dated 08.12.2008 from the petitioner. Another letter with reference No. HYC HRM 7670 E.113 (i) 2008, dated 18-12-2008 has been addressed to the Petitioner regarding the incident involving sexual harassment. The Petitioner, vide his letter dated 22.12.2008, admitted to his misconduct. It is further submitted that the petitioner was placed under suspension, vide proceedings No. HYC HRM 7656 E. 37 2008, dated 19.12.2008 w.e.f 20.12.2008, since the allegations against the petitioner were serious in nature. The Respondent Bank has issued a charge sheet with reference No. HYC HRM DAC 597 CH (W-15) 2008-09, dated 5.1.2009, by setting out the above irregularities as charges. The Petitioner, vide his letter dated Nil, admitted the charges and narrated certain unconnected things. The Disciplinary Authority with a view to conduct an enquiry into the charges and extend opportunity to the petitioner had ordered an Enquiry by appointing Sri. Y. Shankaranarayana, Officer, D A Cell, Circle Office, Hyderabad as Enquiring Officer (EO) and Sri. M. Ramanjaneya, Officer, RM Section, Circle Office, Hyderabad as presenting Officer (PO). The enquiry was conducted in the above matter on 2.2.2009, 25.2.2009 and 4.5.2009. During the course of the enquiry, the petitioner was defended by Sri. Dhirender Swaroop, Clerk, Advances Section, Circle Office, Hyderabad, the Defence Representative of his choice. In the enquiry, the PO has produced MEX. 1 to MEX. 5, as documents relied on by him. He examined 7 witnesses on behalf of Management.

However, the defence did not choose to produce any document/witness. The Branch Manager, who was examined as MW 5 in the enquiry, deposed that the Petitioner used to leave the branch abruptly and come back after some time without information/permission. He also deposed that no work could be entrusted to the petitioner as he was creating problem and complaints were received from customers and staff. Sri. M. Ramulu, who was maintaining SB A/c. No. 8798 with the Kadthal branch stated in the enquiry that the petitioner gave a wrong token to him and the cashier was about to pay him Rs. 33,000/- in place of Rs.15,000/-. One, Sri T. Ramesh Singh, who was working as clerk at the Kadthal Branch, has deposed that wrong payment was made on account of mentioning wrong token number by petitioner on the withdrawal order form. Smt. M. Kousalya, Officer working at Kadthal Branch deposed in the enquiry by stating that the Petitioner used to write her initials on the top of the pass book, GC slips and withdrawal forms which was brought to the notice of the Manager. The Officer, expressed fear that, if something goes wrong with her initials, it might create a problem. Smt. Suvarna holding SB A/C. No. 62606 with Kadthal branch has stated that the petitioner used to write the entries in the pass book shabily and there was delay on his part to attend the customers at the counter. Her pass book was produced in the enquiry as MEx.-1 (f), where certain entries in the pass book were struck off by the petitioner. A lady Clerk, who has given complaint about sexual harassment was produced in the enquiry as MW 4. Her complaint has been marked in the enquiry as MEx 1(9). She confirmed the contents of her complaint about sexual harassment. However, the Petitioner did not cross examine her in the enquiry. Therefore, the serious allegation about the sexual harassment and all other allegations were proved through the witness and the evidence on record was not disputed and the same admitted by the petitioner. Considering the evidence produced in the enquiry, both oral and documentary, the Enquiring Officer has submitted his findings dated 13.4.2009 holding the petitioner guilty of all the allegations leveled against him in the charge sheet. The findings of the Enquiry Officer has been acknowledged by the Petitioner on 06-05-2009 and made his submissions, vide letter dated 07-05-2009. In the reply, he did not make any valid submissions. The Disciplinary Authority taking into consideration, the gravity of the misconduct and the circumstances of the case, proposed the punishment of Compulsory Retirement to be imposed on the Petitioner and in this regard, a personal hearing was fixed on 26-05-2009. The Petitioner did not attend the personal hearing on 26-05-2009 and in order to extend one more opportunity to the petitioner, the personal hearing was again fixed on 20.6.2009. However, the petitioner did not attend the personal hearing on the date fixed. It is submitted that the Disciplinary Authority taking into consideration the gravity of the misconduct, connected records, the circumstances of the case and finding of the Enquiring Officer, held the petitioner guilty of the charges and the punishment of compulsory Retirement was imposed on him, vide proceedings HYC HRM DAC E.37 191 2009, dated 22-06-2009. Aggrieved with the punishment imposed by the Disciplinary Authority (DA), the petitioner has preferred an appeal before the Appellate Authority (AA), vide his appeal dated 29-10-2009. The petitioner was given a personal hearing on 12-03-2010 at Head Office, Bangalore by the Appellate Authority and his submissions were heard. The Appellate Authority, vide its orders dated 10-04-2010, has ordered that since there is no reason to interfere with the orders of the Disciplinary Authority (DA), the punishment imposed has been confirmed. The orders were served on the petitioner on 13.4.2010. It is submitted above mentioned the facts circumstances, it can be seen that during the entire process of Disciplinary action, the petitioner was accorded with due opportunity to put forth his defense and the petitioner was defended by another employee of the Bank, of his choice, they perused the documents produced, cross examined the witness in the enquiry and exhausted all the opportunities accorded. Therefore, the enquiry has been conducted by observing the strict rules of principles of natural justice. It is submitted that the contention that the petitioner was discharging his duties as per the instructions of the superiors and working continuously with clean records of services till he was illegally terminated are absolutely false. The petitioner has not discharged his duties as per the instructions of the superiors and his record was not clean as alleged by the petitioner. It is submitted that the Petitioner was issued with charge sheet dated 5.1.2009, by setting out the irregularities observed on his part. It is submitted that the Petitioner was suspended from the services of the Bank vide orders dated 19.12.2008. It is not true to state that his submissions were not considered by the Bank. It is submitted that is not correct to state that the Enquiring Officer has not explained the procedure before initiating the enquiry into the charges. In fact, apart from explaining him the procedure of enquiry, he was permitted to be defended in the case by another employee of his choice. The Defense Representative engaged by the Petitioner has defended number of other cases earlier and he is well versed with the enquiry proceedings. It is incorrect to state the enquiry proceedings are vitiated for material irregularities. In fact, the petitioner was accorded with every opportunity to put forth his defense, during the course of the enquiry in accordance with principles of natural justice. It is incorrect to contend that the enquiry proceedings was not furnished to the petitioner till the date of order of Compulsory Retirement. It is submitted that on completion of the enquiry process on each occasion, the copy of the proceedings was served on the petitioner by the Enquiring Officer, against his acknowledgment. It is further submitted that all the proceedings pertaining to disciplinary matter against the petitioner has been served on him then and there itself. Further, it is submitted that all the developments are within the knowledge of the petitioner, since he is party to the proceedings the initials of the officer of the branch and the charge of sexual harassment in the work place are serious in nature and all the above allegations were established in the enquiry on the basis of evidence produced both oral and documentary. Further, the charges against the petitioner are very serious. The Petitioner had misbehaved with a lady colleague and made very ugly gesture which has been proved in the domestic enquiry. The Apex Court in its various decisions has taken a serious note of incidents of sexual harassment of women at work places. Such heinous incidents need to be curbed and severe action need to be initiated against the erring employees to maintain the discipline. As such the punishment imposed is not

disproportionate to the charges proved. It is not correct to contend that the punishment of Compulsory Retirement is disproportionate to the proven charges. During the course of the enquiry, the charges relating to deficiency of service to the customers leaving the branch abruptly, etc., have been proved beyond reasonable doubt. Further, the charge of sexual harassment in the work place also has been established with the evidence of the victim. The above charges are serious in nature, which were proved against the petitioner. It is further submitted that the Appellant Authority has categorically mentioned in the orders that the appellant has narrated that he was addicted to the Alcohol and undergoing the treatment. The personal reasons stated by the Appellant cannot be an excuse for not discharging duties in the branch and giving way for customer Complaint. The Appellate Authority also stated that the charge of sexual harassment is serious in nature and it had been established in Enquiry on the basis of evidence produce both oral and documentary. It is further mentioned in the orders of the Appellate Authority that the other allegation that the petitioner was not working properly in the branch by giving room for customer complaints has been established beyond reasonable doubt. It is submitted that the Disciplinary Authority and Appellate Authority have taken the entire matter into consideration including his past conduct and imposed the punishment of Compulsory Retirement purely on the basis of evidence brought on record and considering the seriousness of the charges proved. It is submitted that the Disciplinary Authority has sent a notice of personal hearing on the proposed punishment of Compulsory Retirement to the Petitioner. However, the petitioner did not attend the personal hearing fixed on 26-05-2009 and in order to extend one more opportunity to the petitioner the personal hearing was fixed on 20-06-2009. However, the petitioner did not attend the personal hearing without assigning any reason. It is further submitted that the Appellate Authority before taking final decision in the matter has given personal hearing on 12-03-2010 to the petitioner at Head Office, Bangalore and his submissions were heard. It is submitted that the petitioner has filed an application before the Assistant Commission Labour, (Central) and also submitted an application to the secretary Government of India, Ministry of Finance, New Delhi and the Bank has submitted the appropriate reply to the said applications. The contention that the petitioner is sole bread earner in the family and he remained unemployed and could not secure any alternative employment inspite of his best efforts, etc., are hereby denied and the reasons stated by the petitioner herein are personal in nature and the same are untenable contention. However, it is submitted that the punishment imposed is not disproportionate to the proven charges. Hence, in view of the facts and circumstance of the case of the petitioner and as per the decision of the Hon'ble Supreme Court, the action taken and punishment awarded by the Bank is fully justified and there is no industrial dispute for adjudication. It is therefore prayed that the Hon'ble Tribunal may be pleased to dismiss the petition in the circumstance of the case and in the interest of justice.

4. The perusal of the record reveals that the Petitioner has relied upon photocopies of documents i.e., proceedings of ALC(C), Hyderabad, Order of Appellate Authority, Proceedings of Disciplinary Authority and charge sheet. Respondent has also relied upon the photocopies of documents i.e., Proceedings of the committee looking into the complaints of sexual harassment, charge sheet, explanation of the Petitioner to the charge sheet, enquiry proceeding, enquiry report, Exhibits marked during enquiry proceeding, Written briefs of Presenting officer, Defence representative, explanation of Petitioner to the enquiry report, Proceedings of the DGM, Orders of Disciplinary Authority, representation of Petitioner against punishment of compulsory retirement and Orders of Appellate Authority.

5. The respondent has submitted written arguments u/s 11A of the Industrial Disputes Act, 1947, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written argument.

6. On the basis of rival pleadings and submissions of the parties counsels following points emerge for determination in the present matter:-

- I. Whether the departmental enquiry held against the petitioner is legal and valid?
- II. Whether the action of the Respondent bank in terminating the services of the Petitioner from the bank is justified?
- III. Whether the punishment awarded to the Petitioner is disproportionate and not commensurate to the charge against him?
- IV. To what relief the Petitioner is entitled for?

Findings:

7. **Point No.I:** the validity of domestic enquiry has been held legal and valid vide order dated 14.8.2018.

Thus, point No.I is decided accordingly.

8. **Points No.II & III:-** Petitioner's counsel has submitted that the Petitioner has joined the service of the Canara Bank as a clerk at Pattarghetti Branch in the month of June, 1995 and subsequently, his services were regularized. Since the date of joining he was discharging his duty and continuously with clean record since he was illegally terminated from services by the management by making him compulsorily retired vide order dated 22.6.2009. Petitioner submitted that the Disciplinary Authority without considering his explanation to the charges has imposed the capital punishment of the compulsory retirement by an office order dated 22.6.2009 based on the investigation of the Enquiry Officer which is illegal and unjustified.

9. On the other hand, Respondent's counsel contended that Petitioner was earlier working at Kadthal branch of the Respondent bank as clerk from 10.10.2008 to 2.12.2008. While working at Kadthal branch, he committed certain irregularities in discharge of his duties. Therefore, he was served with a charge sheet and departmental enquiry was conducted against him. In departmental enquiry he was afforded fair op of hearing and for producing evidence. Thereafter Enquiry Officer concluded the enquiry following the principles of natural justice. Hence, found guilty of alleged charges levelled against him. Respondent contended that Petitioner used to leave the branch abruptly and come back after some time without information/ permission. Further, while issuing token numbers to the customers, he used to record same token number on different cheques or he used to give wrong numbers which resulted in confusion while making payment to the customers at the cash counter. Further, he used to take print out of ledger entries of one customer to another customer while updating the pass books. He resorted imitate the initials of Smt. Kousalya, Officer of the Branch on the withdrawal order forms. Further, it is contended that Petitioner used to write incorrect information in the pass books and scribble in the pass books of the customers. That he used to delay in attending to them while working in the branch. Further Respondent contended that the Petitioner misbehaved with one lady Clerk of the Branch by approaching her very nearer, pushed his shirt up and removed is trouser and made ugly postures. The above amounted to sexual harassment against the lady staff at the work place. Therefore, Respondent supporting the punishment order of the compulsory retirement of the Petitioner prayed to dismiss the petition of the Petitioner.

10. The Petitioner has challenged the impugned order of the punishment of compulsory retirement on number of grounds which we will deal one by one.

11. Firstly, the Petitioner submitted that the order of the Disciplinary Authority in imposing the major punishment of compulsory retirement is wholly illegal and just. The Disciplinary Authority and Appellate Authority ought to have seen that the entire enquiry is in violation of the principles of natural justice. Petitioner submits that the Enquiry Officer has not explained the enquiry procedure before initiating the enquiry and not giving opportunity of cross examination of witnesses by the Petitioner. It would be pertinent to mention here that the legality and validity of the departmental enquiry is held as legal and valid vide order dated 14.8.2018. That order has not been challenged by the Petitioner in the higher forum and the order has become final. Therefore, the Petitioner can not agitate the issue of violation of principles of natural justice again.

12. Further, perusal of the record of enquiry proceeding goes to reveal that Petitioner has stated during the enquiry that he received the charge sheet, understood the contents, he was also extended the service of the co-worker to assist him during the enquiry and he was also given all documents on which the Enquiry Officer relied upon. Further, the opportunity to cross examine the witnesses has been accorded to the Petitioner to which the Petitioner did not avail. Thus, the enquiry against the Petitioner has been conducted into the charge levelled against him following the principles of natural justice. Therefore, the plea of the Petitioner in this regard is not tenable.

13. Secondly, Petitioner's counsel has taken the plea that Disciplinary Authority has come to the conclusion with regard to the four allegations mentioned in the 1st charge only based on some assumptions and presumptions as there is specific details/clarity with regard to the same and no supporting evidence produced in the enquiry. Disciplinary Authority ought to have seen that except the statement of Management witnesses, there is no other evidence and even the complaint also conducted and those complaints were taken basing on the instructions of the Management. Therefore, same can not be taken into consideration. Further, Petitioner submits that Appellate Authority did not consider the past conduct and record of the Petitioner while confirming the punishment of compulsory retirement.

14. In view of the submission made by the Petitioner, I perused the record of the enquiry proceeding. The Enquiry Officer during the enquiry has examined as many as seven witnesses in support of the charges levelled against delinquent Petitioner and also considered the documents M.Ex.1 to M.Ex.11, M.Ex.2 to MEx.5 in evidence. Therefore, the plea of the Petitioner that the Enquiry Officer has submitted the enquiry report merely on the basis of statement of the witnesses is not tenable. Further, MW5 is the Branch Manager, who has deposed that Petitioner used to leave the branch abruptly without any leave or permission. He also deposed that he has not allotted him any work since he is creating problems in the working environment and also received many complaints from customers and staff about his behaviour. Since the Petitioner was subordinate employee under the Branch Manager, MW5 and he is the natural and relevant witness to depose the fact about the conduct of the Petitioner during on duty. The Petitioner has not otherwise alleged that the witness MW5 Branch Manager was prejudiced or biased against him. The next witness examined during enquiry, Sri M. Ramulu, who was maintaining SB A/c No. 8798 with the Kadthal branch and he has deposed that Petitioner gave a wrong token to him and the cashier was about to pay him Rs.33,000/- in place of Rs.15,000/-. Further, another witness Sri T. Ramesh Singh who was also working as clerk at the Kadthal branch, has deposed that the wrong payment was made on account of mentioning wrong token number by Petitioner on the withdrawal order form. Another witness Smt. M. Kousalya, Officer working at Kadthal branch deposed in the enquiry that the Petitioner used to write her initials on the top of the pass book, GC slips and withdrawal forms which was brought to the notice of the Manager. Further, the witness Smt. Suvarna holding SB A/c. No.62606 with Kadthal branch has stated that the Petitioner used to write the entries in the pass book shabbily

and there was delay on his part to attend the customers at the counter. Her pass book has been produced in the enquiry as M Ex.1(f), where certain entries in the pass book were struck off by the Petitioner. A lady clerk who has given complaint against Petitioner about sexual harassment was examined in the enquiry as MW4. Her complaint has been marked in the enquiry as MEx 1(g). She confirmed the contents of her complaint about her sexual harassment by the Petitioner in the bank. Further, the Petitioner did not cross examine MW4 in the enquiry. Therefore, the serious allegation about the sexual harassment and all other allegations has been proved through the evidence of witnesses and the evidence on record has not been disputed and the same admitted by the Petitioner. After considering the evidence produced in the enquiry, both oral and documentary, the Enquiry Officer has submitted his findings dated 13.4.2009 holding the Petitioner guilty of all the allegations levelled against him in the charge sheet. The Disciplinary Authority taking into consideration the gravity of the misconduct and connected records and the circumstances of the case and findings of the Enquiry Officer, held the Petitioner guilty of the charges and the punishment of compulsory retirement vide order dated 22.6.2009 was imposed on him. The plea of Petitioner that allegations made in charges are based on mere assumptions and presumptions is untenable. Further, Petitioner has taken plea that the Disciplinary Authority and Appellate Authority before imposing the major punishment has not issued show cause notice to the Petitioner. Therefore, the punishment imposed by the Disciplinary Authority is liable to be set aside. From the perusal of the order of the Disciplinary Authority goes to reveal that Petitioner has been afforded the opportunity of hearing at every stage of proceeding before imposition of punishment. Therefore, the plea of the Petitioner is not acceptable.

15. Further, the Petitioner has submitted that the Disciplinary Authority failed to see that the capital punishment is grossly disproportionate to the gravity of misconduct. That Disciplinary Authority ought to have seen the past conduct of the Petitioner and treating his past conduct, no misconduct has done by the Petitioner nor any memo has been issued to him. Compulsory retirement has not been ought to have been imposed by the Management.

16. Perused the record of enquiry proceeding along with the enquiry report, I am of the view that no fault of any nature can be noticed in the departmental enquiry proceeding. The Petitioner was given fair opportunity at every stage of the proceedings which he availed and he never raised any objections complaining that any prejudice of any nature caused to him, before Enquiry Officer. Further, he received all papers / documents filed and relied upon by the Respondent in support of the charges and cross examination opportunity was afforded to him. The Petitioner attended the proceeding at every stage and Enquiry Officer has appreciated the evidence and submitted his reasoned report holding the Petitioner guilty of both the charges. Thus, no case made out to hold that the departmental enquiry suffers from any procedural lapse or was conducted in violation of the principles of natural justice, thereby causing any prejudice to the rights of the Petitioner. Once it is held that departmental enquiry is legal and proper, the next question arises whether the punishment imposed to the Petitioner is just and proper and/ or it is disproportionate to the charges levelled /imposed. It is not in dispute that both the charges has been held proved in departmental enquiry and both the charges were of serious and grave nature which affected not only smooth functioning of the Respondent bank but also shook the confidence of the public about bank's functioning.

17. So far as the first charge is concerned, no employer would allow or tolerate of his employee's such misconduct while on duty and employer had therefore, had every right to initiate domestic enquiry proceeding against such irresponsible employee. Further, second charge against the Petitioner, it pertains to the misconduct of the sexual harassment against the lady staff at the work place which relates to moral turpitude in nature and not tolerable at all. This charge has also been proved during the enquiry while the victim complainant himself has deposed during the enquiry. Therefore, both the charges being serious in nature, the order of punishment of compulsory retirement of the Petitioner from the service can not be faulted with nor it can said to be in any way disproportionate to the charges levelled against him. Hence, punishment of compulsory retirement of Petitioner was proportionate to the gravity of charges hence, deserves to be upheld.

Hon'ble Apex Court in the case of Coal India Ltd vs Mukul Kumar Chaudhary, Civil Appeal No. 5762-5763, date of decision 24th August, 2001, has laid down the test for deciding proportionality of the punishment imposed and held that:

"One of the test to be applied while dealing with the question of quantum of punishment would be:- Would any reasonable employer have imposed such a punishment in such circumstances? Obviously, a reasonable employer is expected to take into consideration measures, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before punishment."

18. When the test prescribed by the Hon'ble Apex Court, applied to the facts of the present case, it can be reasonably understood that the impugned order withstood the said task. In the circumstances of the present case any employer would reasonably come to such conclusion of compulsory retirement of such employee, who has committed the grave misconduct of unauthorized absence time and again as the Petitioner has not given any good reasons for unauthorized absence substantiating the same he was habitually unauthorizedly absenting himself from duty. Further, the Petitioner has also been held guilty of charge of sexual harassment of lady co-employees at work place and such kind of conduct of the nature of moral turpitude by the Petitioner at work place is not excusable in any circumstances. Thus, he continued to conduct himself in like manner considering the unfortunate hardship to

which the Respondent bank has put to, due to such practice of misconduct, the Disciplinary Authority has rightly imposed the major punishment of compulsory retirement of the Petitioner from service.

In the case of **Kailash Chandra Agarwal Vs. State of M.P. & Anr. 1987 (3) SCC 513**, it was pointed out that the order of compulsory retirement, if taken in public interest could not be treated as major punishment. **In the case of Union of India Vs. M.E. Reddy & Anr. 1980(2) SC 563** it was pointed out that the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service.

19. Therefore, in view of the fore gone discussion, and law laid down by the Hon'ble Apex Court I am of the opinion that in such circumstances as in the present case the punishment of compulsory retirement imposed to Petitioner by Disciplinary Authority warrants no interference and petition is liable to be dismissed.

Thus, Points No. II & III are answered accordingly.

20. **Point No.IV:** In view of the fore gone discussion and finding at Points No.I, II & III and law laid down by Hon'ble Apex Court as discussed above, Petitioner is not entitled to any relief as prayed for.

This Point No. IV is answered accordingly.

AWARD

In view of the fore gone discussion and finding as above, it is held that the action of the Management of Canara Bank, Circle Office, Hyderabad in awarding the punishment of compulsory retirement to Sri Mohan Yuvaraj, Ex-Clerk vide Order Dated 22.6.2009, is legal and justified. As such, the Petitioner is not entitled to any relief as prayed for. Hence, petition is dismissed and reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 16th day of January, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner
NIL

Witnesses examined for the
Respondent
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL